Date of Hearing: March 29, 2016
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2160 (Bonta) – As Amended March 28, 2016

SUMMARY: Expands eligibility for compensation under the Victim Compensation Program (CalVCP) and increases compensation limits for specified losses which are already reimbursed. Specifically, **this bill**:

1) Conforms the application deadline for victims of specified sex crimes to the statute of limitations for those crimes.

2) Authorizes compensation for a victim's emotional injury incurred as a direct result of distribution of child pornography in which the victim appeared, and for the crime of cyber exploitation.

3) Increases compensation limits for reimbursement of installing or increasing residential security from $1,000 to $2,000.

4) Increases compensation limits for relocation from $2,000 to $4,500, and allows relocation for reason of medical necessity.

5) Increases compensation limits for crime scene clean-up costs from $1,000 to $2,000.

6) Authorizes compensating adult derivative victims of a deceased victim for up to five consecutive calendar days of lost income due to bereavement.

7) Expands reimbursement for an adult victim's loss of income to include missed work to attend crime-related appointments, including legal, medical, and mental health counseling appointments.

8) Authorizes compensating adult derivative victims for income loss when it is necessary for them to miss work to take a minor victim to crime-related appointments, including legal, medical, and mental health counseling appointments.

9) Allows reimbursement for transportation and child care expenses that are necessary for a victim to attend crime-related appointments, including legal, medical, and mental health counseling appointments.

10) Makes technical, non-substantive changes.

EXISTING LAW:

1) Establishes the Victim Compensation and Government Claims Board (board) to operate the CalVCP. (Gov. Code, § 13950 et. seq.)

2) Provides than an application for compensation shall be filed with the board in the manner determined by the board. (Gov. Code, § 13952, subd.(a).)

3) States that, except as specified, a person shall be eligible for compensation when all of the following requirements are met:

   a) The person form whom compensation is being sought any of the following:

      i) A victim;

      ii) A derivative victim; and,

      iii) A person who is entitled to reimbursement for funeral, burial or crime scene clean-up expenses pursuant to specified sections of the Government Code.

   b) Either of the following conditions is met:

      i) The crime occurred in California, but only when the board determines that there are federal funds available to the state for the compensation of crime victims; or

      ii) Whether or not the crime occurred in California, the victim was any of the following:

         (1) A California resident;

         (2) A member of the military stationed in California; or,

         (3) A family member living with a member of the military stationed in California.

   c) If compensation is being sought for derivative victim, the derivative victim is a resident of California or any other state who is any of the following:

      i) At the time of the crimes was the victim's parent, grandparent, sibling, spouse, child or grandchild;

      ii) At the time of the crime was living in the victim's household;

      iii) At the time of the crime was a person who had previously lived in the victim's house for a period of not less than two years in a relationship substantially similar to a previously listed relationship;

      iv) Another family member of the victim who witnessed the crime, including, but not limited to, the victim's fiancé or fiancée, or,

      v) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

d) And other specified requirements. (Gov. Code, § 13955.)

4) Authorizes the board to reimburse for pecuniary loss for the following types of losses:

a) Medical or medical-related expenses incurred by the victim for services provided by a licensed medical provider;

b) Out-patient psychiatric, psychological or other mental health counseling-related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center;

c) Compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's injury or the victim's death,

d) Cash payment to, or on behalf of, the victim for job retraining or similar employment-oriented services;

e) The expense of installing or increasing residential security, not to exceed $1,000;

f) The expense of renovating or retrofitting a victim's residence or a vehicle to make them accessible or operational, if it is medically necessary;

g) Relocation expenses up to $2,000 if the expenses are determined by law enforcement to be necessary for the victim's personal safety, or by a mental health treatment provider to be necessary for the emotional well-being of the victim; and,

h) Funeral or burial expenses. (Gov. Code, § 13957, subd. (a).)

5) Limits the total award to or on behalf of each victim to $35,000, except that this amount may be increased up to $70,000 if federal funds for that increase are available. (Gov. Code, § 13957, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2160 helps California meet the needs of crime victims and their advocates---from the college student who needs counseling after discovering, years later, that sexually explicit photos were taken of her as a child---to the single father who is missing work and losing wages to care for a child who witnessed gun violence. Inadequate compensation for child care and transportation are two of the most common barriers preventing a victim from accessing medical care, mental health services, or legal appointments. AB 2160 reduces these barriers by reimbursing victims for their associated child care and transportation costs. AB 2160 will provide critical support for victims of violent crimes by expanding the California Victim's Compensation Program to provide additional resources and support to victims in order facilitate their healing and recovery."

2) **CalVCP**: The CalVCP provides compensation for victims of violent crime, or more specifically those who have been physically injured or threatened with injury. It reimburses eligible victims for many crime-related expenses, such as medical treatment, mental health services, funeral expenses, and home security. Funding for the board comes from restitution fines and penalty assessments paid by criminal offenders, as well as from federal matching funds. (See board Website <http://www.vcgcb.ca.gov/board>.)

3) **Gap Analysis Report**: In July 2015, the board issued the third in a series of reports which sought to determine the unmet needs of crime victims and barriers to services for crime victims. This final report outlined gaps in current services and compensation provided under CalVCP. The board's report concluded that "CalVCP's limitations on benefits prevent the Program from meeting the financial needs of victims. … Additionally, transportation expenses or wage loss due to appointments or court appearances are not covered." (See *Gap Analysis Report: California's Underserved Crime Victims and their Access to Victim Services and Compensation*, July 2015, p. 9, <http://vcgcb.ca.gov/victims/ovcgrant2013/deliverables/CalVCPGapAnalysis-OVCGrant2013.pdf >.)

   As to transportation expenses, the report notes, "Transportation costs are not currently covered by CalVCP, except for transportation to medical appointments more than 100 miles from the victim's home. The lack of reimbursement for transportation costs limits victims' access to services, including mental health treatment, medical appointments, meetings with advocates, and court appearances (especially for protective orders). Offering reimbursement for transportation costs will assist victims in rural areas and frontier counties who may live hours from trauma-informed mental health providers, hospitals, a victim advocate's office or the courthouse. It will also assist victims with limited financial resources who live in urban areas and may need assistance with bus fare or train fare to get to appointments." (*Id.* at p. 13.) This bill allows compensation of transportation costs for victims or derivative victims to travel to medical and mental health appointments, attending meetings with the prosecutor and other crime-related appointments.

   The report also noted that "Reimbursement for childcare and wage loss while attending appointments (court, mental health treatment, or medical appointments) for themselves or their children is another loss not currently covered by CalVCP." (*Id.* at p. 14.) This bill addresses that deficiency by allowing reimbursement for these costs when they are necessary for a victim or derivative victim to attend the aforementioned appointments.

   Another necessary change identified in the report was the need to update the cap on relocation limits. "Relocation limits have not changed since the inception of the benefit 15 years ago. Reimbursements have not kept pace with increases in costs for moving and rents." (*Id.* at p. 13.) This bill increases the reimbursement limit for relocation expenses from $2,000 to $4,000. It also increases the reimbursement caps for crime scene clean up and residential security from $1,000 to $2,000.

4) **Argument in Support**: According to the *Napa County District Attorney*, "AB 2160 is in direct response to the July 2015 report published by the California Victim's Compensation Board (CalVCP) entitled "Gap Analysis Report: California's Underserved Victims and their Access to Victim Services and Compensation." The report makes numerous findings as to why many victims of crime are not able to access the necessary services and compensation

they are entitled to under the law as a result of language difficulties, lack of ability or information to apply, lack of transportation to access services and other barriers including mental disabilities and other disorders.

"I have been a prosecutor for over 30 years and the elected District Attorney for Napa County for the past 18 years. I have also been a career advocate for the rights of victims and our responsibility to do everything we can to help restore their lives and their dignity. Fortunately, we have a very stable Victims Trust Fund under the CalVCP that is able to assist crime victims provided they know how and where to apply for help. AB 2160 reaffirms existing law and expands to allow for the present cost of services such as funeral and burial expenses; mental health treatment; and emergency funding for individuals who have lost their housing as a result of being victimized, often by family members who are supposed to support and care for them."

5) **Related Legislation**:

a) AB 1563 (Rodriguez) establishes a six-month deadline for the board to respond to an appeal from a denial of an application for compensation. AB 1563 is pending in the Assembly Appropriations Committee.

b) AB 1754 (Waldron) creates a pilot program in San Diego County to compensate victims of elder financial theft under the CalVCP.

6) **Prior Legislation**:

a) AB 1140 (Bonta), Chapter 569, revised standards for involvement in a crime and for cooperation with the board in various circumstances; authorized compensation for non-consensual distribution of sexual images of minors, and revised various other rules governing the CalVCP.

b) AB 2809 (Leno), Chapter 587, Statutes of 2008, allowed a minor who suffers emotional injury as a direct result of witnessing a violent crime to be eligible for reimbursement for the costs of outpatient mental health counseling if the minor was in close proximity to the victim when he or she witnessed the crime.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
Alameda County District Attorney
Napa County District Attorney

Opposition

None

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2227 (Waldron) – As Introduced February 18, 2016
As Proposed to be Amended in Committee

SUMMARY: Makes it a misdemeanor when an individual drives with a license suspended or revoked for specified reckless driving offenses, and causes bodily injury to a person other than the driver, as specified. Specifically, **this bill**:

1) Makes it a misdemeanor to drive with a license suspended or revoked for reckless driving causing injury, as specified, and to proximately cause bodily injury to a person other than the driver, when engaging in an act forbidden by law, or neglecting a duty imposed by law in the driving of the vehicle.

2) Specifies that such a crime is punishable with the same minimum periods of imprisonment as if the person was convicted of driving on a license suspended for conviction of reckless driving causing injury. A five day minimum county jail imprisonment on a first offense; and a 10 day minimum county jail imprisonment if the offense occurs within five years of specified prior convictions.

3) Conforms other sections of the Vehicle Code.

EXISTING LAW:

1) States that it is unlawful for a person, while driving a vehicle with a license suspended or revoked for a conviction of a DUI to do an act forbidden by law or neglect a duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to a person other than the driver. (Veh. Code, § 14601.4, subd. (a).)

2) Specifies that a person convicted of the conduct specified above, shall not be released upon work release, community service, or other release program before the minimum period of imprisonment, as specified (10 or 30 days), is served. (Veh. Code, § 14601.4, subd. (b).)

3) States that when the prosecution agrees to a plea to the conduct specified above, or as a substitute for such conduct, except in the interest of justice, when the court finds it should be inappropriate, the court shall require the person convicted to install a certified ignition interlock device on a vehicle that the person owns or operates for a period not to exceed three years. (Veh. Code, § 14601.4, subd. (c).)

4) Prohibits a person from driving a motor vehicle when his or her driving privilege is suspended or revoked for any reason other than those listed in other sections related to driving on a suspended license for non-alcohol related reasons if the person so driving has

knowledge of the suspension or revocation. (Veh. Code, § 14601.1, subd. (a).)

5) States that "knowledge" of driving on a suspended license shall be conclusively presumed if mailed notice has been given by the DMV to the person pursuant to existing law. The presumption established by this subdivision is a presumption affecting the burden of proof. (Veh. Code, § 14601.1, subd. (a).)

6) Provides any person convicted under this section shall be punished as follows:

   a) Upon a first conviction, by imprisonment in the county jail for not more than six months; by a fine of not less than $300 or more than $1,000; or by both that fine and imprisonment; or (Veh. Code, § 14601.1, subd. (b)(1).)

   b) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Vehicle Code Section 14601, 14601.2, or 14601.5, by imprisonment in the county jail for not less than five days or more than one year and by a fine of not less than $500 or more than $2,000. (Veh. Code, § 14601.1, subd. (b)(2).)

7) Allows an otherwise prohibited person from driving a motor vehicle which is owned or utilized by the person's employer during the course of employment on private property which is owned or utilized by the employer except an off-street parking facility as defined in existing law. (Veh. Code, § 14601.1, subd. (c).)

8) States when the prosecution agrees to a plea of guilty or no contest to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of driving on a suspended license when the suspension is based on a DUI, and the court accepts that plea, except, in specified circumstances, the court shall require the person convicted, in addition to any other requirements, to install a certified Ignition Interlock Device (IID) on any vehicle that the person owns or operates for a period not to exceed three years. (Veh. Code, § 14601.1, subd. (d).)

9) Prohibits a person from driving a motor vehicle at any time when that person's driving privilege is suspended or revoked for a conviction of a DUI violation if the person so driving has knowledge of the suspension or revocation. (Veh. Code, § 14601.2(d).)

10) States any person convicted of a violation of this section shall be punished as follows:

   a) Upon a first conviction, by imprisonment in the county jail for not less than 10 days or more than six months and by a fine of not less than $300 or more than $1,000 unless the person has been designated an habitual traffic offender; in which case, the person, in addition, shall be sentenced pursuant to laws relating to habitual traffic offenders. (Veh. Code, § 14601.2, subd. (d)(1).)

   b) If the offense occurred within five years of a prior offense that resulted in a DUI conviction when the offense is not based on a DUI, by imprisonment in the county jail for not less than 30 days or more than one year and by a fine of not less than $500 or more than $2,000 unless the person has been designated a habitual traffic offender and sentenced pursuant to that law. (Veh. Code, § 14601.2, subd. (d)(1).)

11) Specifies that if a person is convicted of a first offense under this section and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days. (Veh. Code, § 14601.2, subd. (e).)

12) Provides if the offense occurred within five years of a prior offense that resulted in a conviction of driving on a suspended license, as specified, and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 30 days. (Veh. Code, § 14601.2, subd. (f).)

13) Provides if any person is convicted of a second or subsequent offense that results in a conviction of this section within seven years, but over five years, of a prior offense that resulted in a conviction of a violation of driving on a suspended license, as specified, and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days. (Veh. Code, § 14601.2, subd. (e).)

14) Specifies that it is a misdemeanor to drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for specified reckless driving offenses or because of a determination as a negligent operator, as specified, if the person so driving has knowledge of the suspension or revocation. (Veh. Code, § 14601, subd. (a).)

15) States that a person convicted for such a misdemeanor shall be punished as follows:

    a) Upon a first conviction, by imprisonment in a county jail for not less than five days or more than six months and by a fine of not less than three hundred dollars or more than one thousand dollars; (Veh. Code, § 14601, subd. (b)(1).)

    b) If the offense occurred within five years of a prior offense that resulted in a conviction of a violation of this section, or other specified suspended license offenses, by imprisonment in a county jail for not less than 10 days or more than one year and by a fine of not less than five hundred dollars or more than two thousand dollars; or (Veh. Code, § 14601, subd. (b)(2).)

    c) If the offense occurred within five years of a prior offense that resulted in a conviction of a violation of this section, or other specified suspended license offenses, and is granted probation, the court shall impose as a condition of probation that the person be confined in a county jail for at least 10 days. (Veh. Code, § 14601, subd. (b)(3).)

16) Allows a peace officer to impound a vehicle for 30 days when the peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked. (Veh. Code, § 14602.6, subd. (a)(1).)

17) Specifies that a vehicle is subject to forfeiture if it is driven by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle at the time of impoundment and has a previous conviction for specified offenses of driving on a suspended license. (Veh. Code, § 14607.6.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2227 will strengthen and broaden existing provisions for penalties for a person driving a vehicle with a suspended or revoked license who causes bodily injury to another person in a collision.

   "The Fatality Analysis Reporting System (FARS) study conducted by the U.S. Department of Transportation found that one in five fatal crashes involves a driver who is unlicensed or whose license is suspended, canceled, or revoked. An updated study conducted in 2012 collected state-wide data from 2008-2012, and found that fatal crashes by invalid licensed drivers in California amounted to 716 out of the total 2,857 crashes during that period.

   "Currently, California's driving on a suspended license offense is a misdemeanor crime that subjects offenders to possible county jail time and substantial fines. This crime is treated differently depending on why a license was suspended or revoked in the first place. Despite the law, two-thirds of offenders still continue to drive while under suspension.

   "This bill makes causing bodily harm to a person while driving with a suspended or revoked license for reckless driving a misdemeanor. This bill is important for public safety as these dangerous drivers should not be on the road."

2) **Unlicensed Drivers and Fatal Accidents:** In 2011, AAA released a study of data and made the following findings: From years 2007 through 2009, 12.8% of all drivers involved in fatal crashes—approximately one of every eight—lacked a valid driver's license. Nearly one in five fatal crashes (18.2%) over this period involved an unlicensed or invalidly licensed driver. These crashes resulted in 21,049 deaths. (Unlicensed to Kill, AAA, November, 2011, pp. 13.)

   The same AAA study examined the data regarding likelihood of an invalidly licensed driver to leaving the scene of an accident. The study found that most unlicensed and invalidly licensed drivers involved in fatal crashes did not leave the scene of the crash. However, invalidly licensed drivers were much more likely than validly licensed drivers to have left the scene. Among drivers with reasonable opportunity to leave the scene, drivers with an expired, cancelled, or denied license were 6.4 times as likely to flee, drivers with a suspended or revoked license were 8.3 times as likely to flee, and unlicensed drivers were 9.4 times as likely to flee, compared to validly licensed drivers. (Unlicensed to Kill, AAA, November, 2011, pp. 13-14.)

3) **Impoundment or Forfeiture of Vehicle if Driver has a Suspended License:** Individuals driving on a suspended license face impoundment or forfeiture of their vehicle in addition to the consequences directly related to criminal charges. Under existing law, a person driving on a suspended license can have their vehicle impounded for 30 days, or even forfeited if the driver has a prior conviction for driving on a suspended license.

   The following Vehicle Code Sections allow for impoundment and forfeiture, respectively:

   Allows a peace officer to impound a vehicle for 30 days when the peace officer determines

that a person was driving a vehicle while his or her driving privilege was suspended or revoked. (Veh. Code, § 14602.6, subd. (a)(1).)

Specifies that a vehicle is subject to forfeiture if it is driven by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle at the time of impoundment and has a previous conviction for specified offenses of driving on a suspended license. (Veh. Code, § 14607.6.)

4) **As Proposed to be Amended in Committee:** Proposed amendments to be taken in committee make it a misdemeanor to drive with a license suspended for specified reckless driving offenses and cause bodily injury to a person other than the driver, as specified. Proposed amendments delete language raising the maximum penalty from misdemeanor to felony.

5) **Argument in Support**: According to *The California Police Chiefs Association*, "Under existing law, it is unlawful for a person, while driving a vehicle with a license suspended or revoked for conviction of a violation of driving under the influence of alcohol or drugs to do an act forbidden by law or neglect a duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to a person other than the driver.

"AB 2227 provides a more substantial consequence for suspended drivers that continue to drive and cause an injury."

6) **Argument in Opposition:** According to The California Public Defenders Association, "This bill would expand section 14601.4 by making it applicable to the act of causing bodily injury while driving in violation of 14601, as well as while driving in violation of 14601.2. More importantly, this bill would change this misdemeanor offense into a wobbler.

"Driving under the influence is a dangerous act, and individuals who injure people by driving while impaired should be punished. Driving while your license is suspended is criminal only by operation of law, but it is not inherently dangerous. If a *former* drunk driver or a *former* reckless driver drives and causes injury to another by acts that are not drunken or reckless, then(s) he is being punished for a status offense; that is, the status of having his license suspended. The acts (s)he commits while driving that lead to the injury of another need not be even criminal, and if committed by another without a suspended license may be treated as a mere traffic accident or a civil tort action. His or her culpability is not sufficiently increased to justify a felony penalty.

"Not only is the penalty disproportionate to the crime, but the penalty causes the additional unnecessary expenses to the state that are inherent in felony prosecution and felony imprisonment. New felonies and the severe costs they incur should not be created unless the crimes created involve high "malum in se" culpability and present a severe public safety threat. This bill is an unnecessary overreach and cannot justify the costs it would require."

7) **Prior Legislation**:

a) AB 430 (Benoit), Chapter 682, Statutes of 2007, made cross-referencing amendments to various Vehicle Code sections to reflect changes made to reckless driving and engaging

in a motor vehicle speed contest that proximately causes great bodily injury.

b) AB 486 (Parra), of 2003-2004 Legislative Session, would have increased penalties for specified offenses for driving with a suspended license. AB 486 was held in Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs

Opposition

California Public Defenders Association

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Amendments Mock-up for 2015-2016 AB-2227 (Waldron (A))

***********Amendments are in *BOLD************

Mock-up based on Version Number 99 - Introduced 2/18/16
Submitted by: Staff Name, Office Name

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 14601.4 of the Vehicle Code is amended to read:

14601.4. (a) (1) It is unlawful for a person, while driving a vehicle with a license suspended or revoked pursuant to Section 14601.2 to do an act forbidden by law or neglect a duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to a person other than the driver.

(2) It is unlawful for a person, while driving a vehicle with a license suspended ~~or revoked pursuant to Section 14601~~ ***based on a conviction of Section 23104 or 23105*** to do an act forbidden by law or neglect a duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to a person other than the driver.

(3) In proving the person neglected a duty imposed by law in the driving of the vehicle, it is not necessary to prove that a specific section of this code was violated.

(b) ~~A violation of this section is punishable as a misdemeanor or as a felony pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

(b) A person convicted ~~of a misdemeanor~~ under this section whose license was suspended or revoked pursuant to Section 14601.2 shall be imprisoned in the county jail and shall not be released upon work release, community service, or other release program before the minimum period of imprisonment, prescribed in Section 14601.2, is served. If a person is convicted of that offense and is granted probation, the court shall require that the person convicted serve at least the minimum time of imprisonment, as specified in those sections, as a term or condition of probation.

(c) A person convicted under this section whose license was suspended based on a conviction of Section 23104 or 23105 shall be imprisoned in the county jail and shall not be released upon work release, community service, or other release program before the minimum period of imprisonment, prescribed in Section 14601, is served. If a person is convicted of that offense

and is granted probation, the court shall require that the person convicted serve at least the minimum time of imprisonment, as specified in those sections, as a term or condition of probation

(d) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it should be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to other requirements, to install a certified ignition interlock device on a vehicle that the person owns or operates for a period not to exceed three years.

(e) This section also applies to the operation of an off-highway motor vehicle on those lands that the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

(f) Upon receipt of the abstract of a conviction, for a person whose license was suspended or revoked pursuant to Section 14601.2 and when the court requires the person to install a certified ignition interlock device pursuant to subdivision (d), the department shall not reinstate the privilege to operate a motor vehicle until the department receives proof of either the "Verification of Installation" form as described in paragraph (2) of subdivision (h) of Section 13386 or the Judicial Council Form I.D. 100.

(g) If Section 23573 is applicable, then subdivisions (d) and (f) are not applicable.

~~**SEC. 2.** Section 14607.6 of the Vehicle Code is amended to read:~~

~~**14607.6.** (a) Notwithstanding any other provision of law, and except as provided in this section, a motor vehicle is subject to forfeiture as a nuisance if it is driven on a highway in this state by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle at the time of impoundment and has a previous misdemeanor conviction for a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5.~~

~~(b) A peace officer shall not stop a vehicle for the sole reason of determining whether the driver is properly licensed.~~

~~(c) (1) If a driver is unable to produce a valid driver's license on the demand of a peace officer enforcing the provisions of this code, as required by subdivision (b) of Section 12951, the vehicle shall be impounded regardless of ownership, unless the peace officer is reasonably able, by other means, to verify that the driver is properly licensed. Prior to impounding a vehicle, a peace officer shall attempt to verify the license status of a driver who claims to be properly licensed but is unable to produce the license on demand of the peace officer.~~

(2) A peace officer shall not impound a vehicle pursuant to this subdivision if the license of the driver expired within the preceding 30 days and the driver would otherwise have been properly licensed.

(3) A peace officer may exercise discretion in a situation where the driver without a valid license is an employee driving a vehicle registered to the employer in the course of employment. A peace officer may also exercise discretion in a situation where the driver without a valid license is the employee of a bona fide business establishment or is a person otherwise controlled by such an *that* establishment and it reasonably appears that an owner of the vehicle, or an agent of the owner, relinquished possession of the vehicle to the business establishment solely for servicing or parking of the vehicle or other reasonably similar situations, and where *when* the vehicle was not to be driven except as directly necessary to accomplish that business purpose. In this event, if the vehicle can be returned to or be retrieved by the business establishment or registered owner, the peace officer may release and not impound the vehicle.

(4) A registered or legal owner of record at the time of impoundment may request a hearing to determine the validity of the impoundment pursuant to subdivision (n).

(5) If the driver of a vehicle impounded pursuant to this subdivision was not a registered owner of the vehicle at the time of impoundment, or if the driver of the vehicle was a registered owner of the vehicle at the time of impoundment but the driver does not have a previous conviction for a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5, the vehicle shall be released pursuant to this code and is not subject to forfeiture.

(d) (1) This subdivision applies only if the driver of the vehicle is a registered owner of the vehicle at the time of impoundment. Except as provided in paragraph (5) of subdivision (c), if the driver of a vehicle impounded pursuant to subdivision (c) was a registered owner of the vehicle at the time of impoundment, the impounding agency shall authorize release of the vehicle if, within three days of impoundment, the driver of the vehicle at the time of impoundment presents his or her valid driver's license, including a valid temporary California driver's license or permit, to the impounding agency. The vehicle shall then be released to a registered owner of record at the time of impoundment, or an agent of that owner authorized in writing, upon payment of towing and storage charges related to the impoundment, and any administrative charges authorized by Section 22850.5, providing that the person claiming the vehicle is properly licensed and the vehicle is properly registered. A vehicle impounded pursuant to the circumstances described in paragraph (3) of subdivision (c) shall be released to a registered owner whether or not the driver of the vehicle at the time of impoundment presents a valid driver's license.

(2) If there is a community property interest in the vehicle impounded pursuant to subdivision (c), owned at the time of impoundment by a person other than the driver, and the vehicle is the only vehicle available to the driver's immediate family that may be operated with a class C driver's license, the vehicle shall be released to a registered owner or to the community property interest owner upon compliance with all of the following requirements:

~~(A) The registered owner or the community property interest owner requests release of the vehicle and the owner of the community property interest submits proof of that interest.~~

~~(B) The registered owner or the community property interest owner submits proof that he or she, or an authorized driver, is properly licensed and that the impounded vehicle is properly registered pursuant to this code.~~

~~(C) All towing and storage charges related to the impoundment and any administrative charges authorized pursuant to Section 22850.5 are paid.~~

~~(D) The registered owner or the community property interest owner signs a stipulated vehicle release agreement, as described in paragraph (3), in consideration for the nonforfeiture of the vehicle. This requirement applies only if the driver requests release of the vehicle.~~

~~(3) A stipulated vehicle release agreement shall provide for the consent of the signator to the automatic future forfeiture and transfer of title to the state of any vehicle registered to that person, if the vehicle is driven by a driver with a suspended or revoked license, or by an unlicensed driver. The agreement shall be in effect for only as long as it is noted on a driving record maintained by the department pursuant to Section 1806.1.~~

~~(4) The stipulated vehicle release agreement described in paragraph (3) shall be reported by the impounding agency to the department not later than 10 days after the day the agreement is signed.~~

~~(5) No vehicle shall be released pursuant to paragraph (2) if the driving record of a registered owner indicates that a prior stipulated vehicle release agreement was signed by that person.~~

~~(e) (1) The impounding agency, in the case of a vehicle that has not been redeemed pursuant to subdivision (d), or that has not been otherwise released, shall promptly ascertain from the department the names and addresses of all legal and registered owners of the vehicle.~~

~~(2) The impounding agency, within two days of impoundment, shall send a notice by certified mail, return receipt requested, to all legal and registered owners of the vehicle, at the addresses obtained from the department, informing them that the vehicle is subject to forfeiture and will be sold or otherwise disposed of pursuant to this section. The notice shall also include instructions for filing a claim with the district attorney, and the time limits for filing a claim. The notice shall also inform any legal owner of its right to conduct the sale pursuant to subdivision (g). If a registered owner was personally served at the time of impoundment with a notice containing all the information required to be provided by this paragraph, no further notice is required to be sent to a registered owner. However, a notice shall still be sent to the legal owners of the vehicle, if any. If notice was not sent to the legal owner within two working days, the impounding agency shall not charge the legal owner for more than 15 days' impoundment when the legal owner redeems the impounded vehicle.~~

~~(3) No processing charges shall be imposed on a legal owner who redeems an impounded vehicle within 15 days of the impoundment of that vehicle. If no claims are filed and served within 15 days after the mailing of the notice in paragraph (2), or if no claims are filed and served within five days of personal service of the notice specified in paragraph (2), when no other mailed notice is required pursuant to paragraph (2), the district attorney shall prepare a written declaration of forfeiture of the vehicle to the state. A written declaration of forfeiture signed by the district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited vehicle. A copy of the declaration shall be provided on request to any person informed of the pending forfeiture pursuant to paragraph (2). A claim that is filed and is later withdrawn by the claimant shall be deemed not to have been filed.~~

~~(4) If a claim is timely filed and served, then the district attorney shall file a petition of forfeiture with the appropriate juvenile or superior court within 10 days of the receipt of the claim. The district attorney shall establish an expedited hearing date in accordance with instructions from the court, and the court shall hear the matter without delay. The court filing fee of one hundred dollars ($100) shall be paid by the claimant, but shall be reimbursed by the impounding agency if the claimant prevails. To the extent practicable, the civil and criminal cases shall be heard at the same time in an expedited, consolidated proceeding. A proceeding in the civil case is a limited civil case.~~

~~(5) The burden of proof in the civil case shall be on the prosecuting agency, by a preponderance of the evidence. All questions that may arise shall be decided and all other proceedings shall be conducted as in an ordinary civil action. A judgment of forfeiture does not require as a condition precedent the conviction of a defendant of an offense which made the vehicle subject to forfeiture. The filing of a claim within the time limits specified in paragraph (3) is considered a jurisdictional prerequisite for the availing of the action authorized by that paragraph.~~

~~(6) All right, title, and interest in the vehicle shall vest in the state upon commission of the act giving rise to the forfeiture.~~

~~(7) The filing fee in paragraph (4) shall be distributed as follows:~~

~~(A) To the county law library fund as provided in Section 6320 of the Business and Professions Code, the amount specified in Sections 6321 and 6322.1 of the Business and Professions Code.~~

~~(B) To the Trial Court Trust Fund, the remainder of the fee.~~

~~(f) Any vehicle impounded that is not redeemed pursuant to subdivision (d) and is subsequently forfeited pursuant to this section shall be sold once an order of forfeiture is issued by the district attorney of the county of the impounding agency or a court, as the case may be, pursuant to subdivision (e).~~

~~(g) Any legal owner who is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or the agent of that legal owner, may take possession and conduct the sale of the forfeited vehicle if the legal owner or agent~~

notifies the agency impounding the vehicle of its intent to conduct the sale within 15 days of the mailing of the notice pursuant to subdivision (e). Sale of the vehicle after forfeiture pursuant to this subdivision may be conducted at the time, in the manner, and on the notice usually given for the sale of repossessed or surrendered vehicles. The proceeds of any sale conducted by or on behalf of the legal owner shall be disposed of as provided in subdivision (i). A notice pursuant to this subdivision may be presented in person, by certified mail, by facsimile transmission, or by electronic mail.

(h) If the legal owner or agent of the owner does not notify the agency impounding the vehicle of its intent to conduct the sale as provided in subdivision (g), the agency shall offer the forfeited vehicle for sale at public auction within 60 days of receiving title to the vehicle. Low value vehicles shall be disposed of pursuant to subdivision (k).

(i) The proceeds of a sale of a forfeited vehicle shall be disposed of in the following priority:

(1) To satisfy the towing and storage costs following impoundment, the costs of providing notice pursuant to subdivision (e), the costs of sale, and the unfunded costs of judicial proceedings, if any.

(2) To the legal owner in an amount to satisfy the indebtedness owed to the legal owner remaining as of the date of sale, including accrued interest or finance charges and delinquency charges, providing that the principal indebtedness was incurred prior to the date of impoundment.

(3) To the holder of any subordinate lien or encumbrance on the vehicle, other than a registered or legal owner, to satisfy any indebtedness so secured if written notification of demand is received before distribution of the proceeds is completed. The holder of a subordinate lien or encumbrance, if requested, shall furnish reasonable proof of its interest and, unless it does so upon request, is not entitled to distribution pursuant to this paragraph.

(4) To any other person, other than a registered or legal owner, who can reasonably establish an interest in the vehicle, including a community property interest, to the extent of his or her provable interest, if written notification is received before distribution of the proceeds is completed.

(5) Of the remaining proceeds, funds shall be made available to pay any local agency and court costs, that are reasonably related to the implementation of this section, that remain unsatisfied.

(6) Of the remaining proceeds, half shall be transferred to the Controller for deposit in the Vehicle Inspection and Repair Fund for the high-polluter repair assistance and removal program created by Article 9 (commencing with Section 44090) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, and half shall be transferred to the general fund of the city or county of the impounding agency, or the city or county where the impoundment occurred. A portion of the local funds may be used to establish a reward fund for persons coming forward with

~~information leading to the arrest and conviction of hit-and-run drivers and to publicize the availability of the reward fund.~~

~~(j) The person conducting the sale shall disburse the proceeds of the sale as provided in subdivision (i) and shall provide a written accounting regarding the disposition to the impounding agency and, on request, to any person entitled to or claiming a share of the proceeds, within 15 days after the sale is conducted.~~

~~(k) If the vehicle to be sold pursuant to this section is not of the type that can readily be sold to the public generally, the vehicle shall be conveyed to a licensed dismantler or donated to an eleemosynary institution. License plates shall be removed from any vehicle conveyed to a dismantler pursuant to this subdivision.~~

~~(l) No vehicle shall be sold pursuant to this section if the impounding agency determines the vehicle to have been stolen. In this event, the vehicle may be claimed by the registered owner at any time after impoundment, providing the vehicle registration is current and the registered owner has no outstanding traffic violations or parking penalties on his or her driving record or on the registration record of any vehicle registered to the person. If the identity of the legal and registered owners of the vehicle cannot be reasonably ascertained, the vehicle may be sold.~~

~~(m) Any owner of a vehicle who suffers any loss due to the impoundment or forfeiture of any vehicle pursuant to this section may recover the amount of the loss from the unlicensed, suspended, or revoked driver. If possession of a vehicle has been tendered to a business establishment in good faith, and an unlicensed driver employed or otherwise directed by the business establishment is the cause of the impoundment of the vehicle, a registered owner of the impounded vehicle may recover damages for the loss of use of the vehicle from the business establishment.~~

~~(n) (1) The impounding agency, if requested to do so not later than 10 days after the date the vehicle was impounded, shall provide the opportunity for a poststorage hearing to determine the validity of the storage to the persons who were the registered and legal owners of the vehicle at the time of impoundment, except that the hearing shall be requested within three days after the date the vehicle was impounded if personal service was provided to a registered owner pursuant to paragraph (2) of subdivision (c) and no mailed notice is required.~~

~~(2) The poststorage hearing shall be conducted not later than two days after the date it was requested. The impounding agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle. Failure of either the registered or legal owner to request a hearing as provided in paragraph (1) or to attend a scheduled hearing shall satisfy the poststorage hearing requirement.~~

~~(3) The agency employing the person who directed the storage is responsible for the costs incurred for towing and storage if it is determined that the driver at the time of impoundment had a valid driver's license.~~

~~(o) As used in this section, "days" means workdays not including weekends and holidays.~~

~~(p) Charges for towing and storage for any vehicle impounded pursuant to this section shall not exceed the normal towing and storage rates for other vehicle towing and storage conducted by the impounding agency in the normal course of business.~~

~~(q) The Judicial Council and the Department of Justice may prescribe standard forms and procedures for implementation of this section to be used by all jurisdictions throughout the state.~~

~~(r) The impounding agency may act as the agent of the state in carrying out this section.~~

~~(s) No vehicle shall be impounded pursuant to this section if the driver has a valid license but the license is for a class of vehicle other than the vehicle operated by the driver.~~

~~(t) This section does not apply to vehicles subject to Sections 14608 and 14609, if there has been compliance with the procedures in those sections.~~

~~(u) As used in this section, "district attorney" includes a city attorney charged with the duty of prosecuting misdemeanor offenses.~~

~~(v) The agent of a legal owner acting pursuant to subdivision (g) shall be licensed, or exempt from licensure, pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code.~~

~~**SEC. 3.** Section 14607.8 of the Vehicle Code is amended to read:~~

~~**14607.8.** Upon a first misdemeanor conviction of a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5, the court shall inform the defendant that, pursuant to Section 14607.6, a motor vehicle is subject to forfeiture as a nuisance if it is driven on a highway in this state by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle and has a previous misdemeanor conviction for a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, *or* 14601.3, *paragraph (2) of subdivision (a) of Section* 14601.4, or *Section* 14601.5.~~

SEC. 4. Section 23573 of the Vehicle Code is amended to read:

23573. (a) The Department of Motor Vehicles, upon receipt of the court's abstract of conviction for a violation listed in subdivision (j), shall inform the convicted person of the requirements of this section and the term for which the person is required to have a certified ignition interlock device installed. The records of the department shall reflect the mandatory use of the device for the term required and the time when the device is required to be installed pursuant to this code.

(b) The department shall advise the person that installation of an ignition interlock device on a vehicle does not allow the person to drive without a valid driver's license.

(c) A person who is notified by the department pursuant to subdivision (a) shall, within 30 days of notification, complete all of the following:

(1) Arrange for each vehicle owned or operated by the person to be fitted with an ignition interlock device by a certified ignition interlock device provider under Section 13386.

(2) Notify the department and provide to the department proof of installation by submitting the "Verification of Installation" form described in paragraph (2) of subdivision (g) of Section 13386.

(3) Pay to the department a fee sufficient to cover the costs of administration of this section, including startup costs, as determined by the department.

(d) The department shall place a restriction on the driver's license record of the convicted person that states the driver is restricted to driving only vehicles equipped with a certified ignition interlock device.

(e) (1) A person who is notified by the department pursuant to subdivision (a) shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate and monitor the operation of the device.

(2) The installer shall notify the department if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device.

(f) The department shall monitor the installation and maintenance of the ignition interlock device installed pursuant to subdivision (a).

(g) (1) A person who is notified by the department, pursuant to subdivision (a), is exempt from the requirements of subdivision (c) if all of the following circumstances occur:

(A) Within 30 days of the notification, the person certifies to the department all of the following:

(i) The person does not own a vehicle.

(ii) The person does not have access to a vehicle at his or her residence.

(iii) The person no longer has access to the vehicle being driven by the person when he or she was arrested for a violation that subsequently resulted in a conviction for a violation listed in subdivision (j).

(iv) The person acknowledges that he or she is only allowed to drive a vehicle that is fitted with an operating ignition interlock device and that he or she is required to have a valid driver's license before he or she can drive.

(v) The person is subject to the requirements of this section when he or she purchases or has access to a vehicle.

(B) The person's driver's license record has been restricted pursuant to subdivision (d).

(C) The person complies with this section immediately upon commencing ownership or operation of a vehicle subject to the required installation of an ignition interlock device.

(2) A person who has been granted an exemption pursuant to this subdivision and who subsequently drives a vehicle in violation of the exemption is subject to the penalties of subdivision (i) in addition to any other applicable penalties in law.

(h) This section does not permit a person to drive without a valid driver's license.

(i) A person who is required under subdivision (c) to install an ignition interlock device who willfully fails to install the ignition interlock device within the time period required under subdivision (c) is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than six months or by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment.

(j) In addition to all other requirements of this code, a person convicted of any of the following violations shall be punished as follows:

(1) Upon a conviction of a violation of Section 14601.2, paragraph (1) of subdivision (a) of Section 14601.4, or Section 14601.5 subsequent to one prior conviction of a violation of Section 23103.5, 23152, or 23153, within a 10-year period, the person shall immediately install a certified ignition interlock device, pursuant to this section, in all vehicles owned or operated by that person for a term of one year.

(2) Upon a conviction of a violation of Section 14601.2, paragraph (1) of subdivision (a) of Section 14601.4, or Section 14601.5 subsequent to two prior convictions of a violation of Section 23103.5, 23152, or 23153, within a 10-year period, or one prior conviction of Section 14601.2, paragraph (1) of subdivision (a) of Section 14601.4, or Section 14601.5, within a 10-year period, the person shall immediately install a certified ignition interlock device, pursuant to this section, in all vehicles owned or operated by that person for a term of two years.

(3) Upon a conviction of a violation of Section 14601.2, paragraph (1) of subdivision (a) of Section 14601.4, or Section 14601.5 subsequent to three or more prior convictions of a violation of Section 23103.5, 23152, or 23153, within a 10-year period, or two or more prior convictions of Section 14601.2, paragraph (1) of subdivision (a) of Section 14601.4, or Section 14601.5, within a 10-year period, the person shall immediately install a certified ignition interlock device,

pursuant to this section, in all vehicles owned or operated by that person for a term of three years.

(k) The department shall notify the court if a person subject to this section has failed to show proof of installation within 30 days of the department informing the person he or she is required to install a certified ignition interlock device.

(l) Subdivisions (j), (k), (m), (n), and (o) of Section 23575 apply to this section.

(m) The requirements of this section are in addition to any other requirements of law.

(n) This section shall become operative on July 1, 2009.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Date of Hearing: March 29, 2016
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2245 (Cooper) – As Introduced February 18, 2016

SUMMARY: Exempts probation departments and sworn members of probation departments from the prohibition related to the purchase or sale of unsafe handguns.

EXISTING LAW:

1) Requires commencing January 1, 2001, that any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. (Pen. Code, § 32000, subd. (a).)

    a) Specifies that this section shall not apply to any of the following:

        i) The manufacture in California, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice (DOJ) to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited, inclusive, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this.

        ii) The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents of entities determining whether the weapon is prohibited by this section.

        iii) Firearms listed as curios or relics, as defined in federal law.

        iv) The sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person. (Pen. Code, § 32000, subd. (b).)

2) Specifies that violations of the unsafe handgun provisions are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. (Pen. Code, § 32000, subd. (c).)

3) Defines "unsafe handgun" as any pistol, revolver, or other firearm capable of being concealed upon the person, as specified, which lacks various safety mechanisms, as specified. (Pen. Code, § 31910.)

4) Requires any concealable firearm manufactured in California, imported for sale, kept for sale, or offered for sale to be tested within a reasonable period of time by an independent laboratory, certified by the state Department of Justice (DOJ), to determine whether it meets required safety standards, as specified. (Pen. Code, § 32010, subd. (a).)

5) Requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state, as specified. The roster shall list, for each firearm, the manufacturer, model number, and model name. (Pen. Code, § 32015, subd. (a).)

6) Provides that DOJ may charge every person in California who is licensed as a manufacturer of firearms, as specified, and any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in California, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster of firearms determined not be unsafe, and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs, as specified. (Pen. Code § 32015, subd. (b)(1).)

7) Provides that the Attorney General (AG) may annually test up to 5 percent of the handgun models listed on the roster that have been found to be not unsafe. (Pen. Code, § 30020, subd. (a).)

8) States that a handgun removed from the roster for failing the above retesting may be reinstated to the roster if all of the following are met:

   a) The manufacturer petitions the AG for reinstatement of the handgun model;

   b) The manufacturer pays the DOJ for all the costs related to the reinstatement testing of the handgun model, including purchase of the handgun, prior to reinstatement testing;

   c) The reinstatement testing of the handguns shall be in accordance with specified retesting procedures;

   d) The three handgun samples shall only be tested once. If the sample fails it may not be retested;

   e) If the handgun model successfully passes testing for reinstatement, as specified, the AG shall reinstate the handgun model on the roster of not unsafe handguns;

f) Requires the handgun manufacturer to provide the AG with the complete testing history for the handgun model; and,

g) Allows the AG, at any time, to further retest any handgun model that has been reinstated to the roster. (Pen. Code, § 32025, subds. (a)-(g).)

9) Provides that a firearm may be deemed to be listed on the roster of not unsafe handguns if a firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm in one or more of the following features:

a) Finish, including, but not limited to bluing, chrome plating or engraving;

b) The material form which the grips are made;

c) The shape or texture of the grips, so long as the difference in grip shape or texture that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.

d) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm. (Pen Code, § 32030, subd. (a).)

10) States that any manufacturer seeking to have a firearm listed as being similar to a tested firearm shall provide the DOJ with the following:

a) The model designation of the listed firearm;

b) The model designation of each firearm that the manufacturer seeks to have listed on the roster of not unsafe handguns;

c) Requires a manufacturer to make a statement under oath that each unlisted firearm for which listing is sought differs from the listed firearm in only one or more specified ways, and is otherwise identical to the listed firearm. (Pen Code, § 32030, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Probation departments and officers have recently been unable to upgrade on-duty handguns to the latest models because probation is not expressly cited in PC 32000(b)(4) which sets forth the peace officers that are authorized to purchase and use non-roster handguns. Two examples of this include Marin and San Mateo Probation Departments who have been denied purchases.

"Probation officers receive the same POST certified PC 832 firearms and arrest training as other peace officers currently noted in existing law. Further, probation officers qualify quarterly for their firearms training which meets and exceeds the general training requirements.

"Probation also often works in concert with other local law enforcement agencies on task forces including, but not limited to, gang task forces, narcotic task forces, compliance checks, PC 290 registration compliance and other duties.

"Therefore, it is important that probation be able to purchase, train with, and use the same models of firearms that other peace officers that we work with are able to use.

2) **Argument in Support**: According to the *Chief Probation Officers of California*, "Existing law does not expressly note probation departments as peace officers who are authorized to purchase non-roster firearms for official department use, which historically has not presented an issue to departments in being able to purchase the necessary models of firearms needed for on-duty responsibilities.

"However, recently a few county probation department-Marin and San Mateo- had their purchase order to upgrade on-duty handguns to the latest models denied by firearms dealers noting state exemptions for peace officers that are authorized to purchase and use, in their official duties, not on the rostered list.

"Probation officers receive the same POST certified PC 832 firearms and arrest training as other peace officers currently noted in existing law. Further, probation officers qualify quarterly for their firearms training which meets and exceeds the general training requirements.

"In addition to the duties of supervising persons on probation, Post-Release Community Supervision (PRCS), and Mandatory Supervision (MS), probation often works in concert with other local law enforcement agencies on task forces including, but not limited to, gang task forces, narcotic task forces, compliance checks, PC 290 registration compliance and other duties. Therefore, it is important that probation be able to purchase, train with, and use the same models of firearms that other peace officers that we work with are able to use".

3) **Argument in Opposition**: According to the *California Chapters of the Brady Campaign to Prevent Gun Violence*, "AB 2245 would expand this exemption and allow probation departments to obtain unsafe handguns. The bill is unnecessary because probation officers have many safer models of handguns available to them.

"Officers frequently take their service weapons home and, in some cases, fail to lock them away. Firearms with prominent loaded chamber indicators and magazine disconnect safety devices are safer than those without these and other safety features.

"There are many instances of even highly trained law enforcement officers being unaware that a round remains in the chamber of a pistol that lacks a loaded chamber indicator and unintentionally shooting someone. Some models of unsafe handguns lack manual safeties. Unsafe gun designs help cause many unintentional firearm injuries and deaths. For example, unintentional injuries called "Glock leg" are common.

"There have also been a number of instances where firearms originally sold to law enforcement were, in turn, re-sold or transferred to civilians. Some law enforcement handguns have been stolen or in other ways have gotten into civilian hands."

REGISTERED SUPPORT / OPPOSITION:

Support

Chief Probation Officers of California (Sponsor)
Los Angeles Professional Peace Officers Association
Peace Officers Research Association of California
Riverside Sheriffs' Association
Los Angeles Probation Officers Union, AFSCME Local 685

Opposition

California Chapters of the Brady Campaign to Prevent Gun Violence
Law Center to Prevent Gun Violence

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2262 (Levine) – As Amended March 28, 2016

SUMMARY: Allows the court to order a defendant to serve all, or part, of their state prison or county jail sentence in a residential mental health facility, when a defendant establishes that they meet specified criteria regarding mental illness. Specifically, **this bill**:

1) Permits a defendant, who at any prior time was eligible for public mental health services due to serious mental illness, or who is currently, or at any prior time was, eligible for Social Security Insurance due to a diagnosed mental illness, to petition the court for a sentence that includes mental health treatment.

2) Specifies that the petition shall be filed after the defendant's plea or conviction, but before his or her sentencing.

3) Specifies that the defendant shall bear the burden of establishing by a preponderance of the evidence that he or she meets the specified criteria regarding mental illness.

4) Authorizes the court, upon a determination that a defendant has met the specified criteria regarding mental illness, and a determination that it is in the public interest, to order the one or more of the following:

   a) That the defendant serve, if the defendant agrees, all or a part of his or her sentence in a residential mental health treatment facility instead of in the state prison or county jail. Defendants with a current conviction for a violent felony, as specified, would not qualify.

   b) The California Department of Corrections and Rehabilitation (CDCR) or the county jail to place the defendant in a mental health program within the state prison or county jail system, respectively, at a level of care determined to be appropriate by mental health staff, within 30 days, of the defendant's placement in the state prison or county jail.

   c) CDCR or the county jail to prepare a postrelease mental health treatment plan six months prior to the defendant's release to parole or postrelease community supervision which specifies the manner in which the defendant will receive mental health treatment services following that release, and shall address, if applicable and in the discretion of the court, medication management, housing, and substance abuse treatment.

5) The defendant or prosecutor may, at any time, petition the court to recall a sentence that includes a mental health treatment order issued under these guidelines and the court may resentence the defendant, provided the defendant gets credit for the time he or she served and the court does not impose sentence longer than originally imposed.

6) Specifies that a re-sentence may, but is not required, to include other mental health treatment, as specified.

7) Specifies that the defendant has the right to counsel for these proceedings.

EXISTING LAW:

1) Finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. (Pen. Code, § 1202.7.)

2) Specifies that "probation" means "the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer." (Pen. Code, § 1203(a).)

3) Specifies that "conditional sentence" means "the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer." (Pen. Code, § 1203(a).)

4) Provides that the court, in granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as specified, and upon those terms and conditions as it shall determine. (Pen. Code, § 1203.1.)

5) States that the court may impose and require any or all of the terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done and for the rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail, as specified. (Pen. Code, § 1203.1, subd. (j).)

6) Specifies that when it appears to the person in charge of a jail, or juvenile detention facility, or to any judge of a court in the county in which the jail or juvenile detention facility is located, that a person in custody in that jail or juvenile detention facility may be mentally disordered, he or she may cause the prisoner to be taken to a facility for 72-hour treatment and evaluation. (Pen. Code, § 4011.6.)

7) States that if a prisoner is detained in, or remanded to, a mental health facility, the facility shall transmit a report, which shall be confidential, to the person in charge of the jail or juvenile detention facility or judge of the court who caused the prisoner to be taken to the facility and to the local mental health director or his or her designee, concerning the condition of the prisoner. (Pen. Code, § 4011.6.)

8) Specifies that if the prisoner is detained in a mental health facility, the time passed in the facility shall count as part of the prisoner's sentence.

9) States that if the prisoner is to be released from the facility before conclusion of their sentence, the professional person in charge shall notify the local mental health director, counsel for the prisoner, the prosecuting attorney, and the person in charge of the jail or juvenile detention facility, who shall send for, take, and receive the prisoner back into the jail or juvenile detention facility. (Pen. Code, § 4011.6.)

10) Provides that a defendant, either charged with or convicted of a criminal offense, or a minor alleged to be within the jurisdiction of the juvenile court, may be concurrently subject to mental health detention as specified by law under the Welfare and Institutions Code. (Pen. Code, § 4011.6.)

11) States that upon conviction of any felony in which the defendant is sentenced to state prison, and the court makes any of the findings listed below, a court shall, in addition to any other terms of imprisonment, fine, and conditions, recommend in writing that the defendant participate in a counseling or education program having a substance abuse component while imprisoned:

    a) That the defendant at the time of the commission of the offense was under the influence of any alcoholic beverages; (Pen. Code, § 1203.096, subd. (b)(1).)

    b) That the defendant at the time of the commission of the offense was under the influence of any controlled substance; (Pen. Code, § 1203.096, subd. (b)(2).)

    c) That the defendant has a demonstrated history of substance abuse; and (Pen. Code, § 1203.096, subd. (b)(3).)

    d) That the offense or offenses for which the defendant was convicted are drug related. (Pen. Code, § 1203.096, subd. (b)(4).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Jails and prisons have become California's de facto mental health facilities with those who are mentally ill being far more likely to be incarcerated than to be in a psychiatric hospital. Incarcerating those with mental illness does not make sense from an outcomes or a fiscal stand point. Studies have found that individuals who participate in mental health courts reoffend one third of the time than those who do not and that participant's show significant improvement in quality of life. Furthermore, mental health courts have been demonstrated to save $7 in costs for every $1 spent. It costs $51,000 a year to house an inmate, and $20,412 to house and treat a person with mental illness. AB 1006 gives the court the ability to consider the presence of a mental illness in criminal sentencing."

2) **Prevalence of Mentally Ill Offenders:** The Department of Corrections and Rehabilitation's (CDCR) Council on Mentally Ill Offenders (COMIO) regards the growing number of

inmates suffering from mental health issues as a pressing concern.[1]

Nationally, a 2009 American Psychiatric Association study "found that 14.5% of male and 31.0% of female inmates recently admitted to jail have a serious mental illness" which is three to six times higher than rates found in the general population. "A serious mental illness" included major depressive disorder, depressive disorder not otherwise specified, schizophrenia spectrum disorder, schizoaffective disorder, schizophreniform disorder, brief psychotic disorder, delusional disorder, and psychotic disorder not otherwise specified.[2]

In 2009, the Division of Correctional Health Care Services for the CDCR estimated that 23 percent of California's prison inmates have a serious mental illness.[3] According to the Berkeley Center for Criminal Justice, an estimated "40 to 70 percent of youth in the California juvenile justice system have some mental health disorder or illness," with 15 to 25 percent considered severely mentally ill. Based on these numbers, youth in California's juvenile justice system are two to four times more likely to be in need of mental health care than California youth generally.[4] The Bureau of Justice Statistics reported in 2006 that 74 percent of mentally ill state prisoners and 76 percent of mentally ill local jail inmates also met the criteria for substance dependence or abuse indicating a larger issue with co-occurring disorders among mentally ill offenders.[5]

3) **Increased Rates of Recidivism Among Mentally Ill Offenders:** A 2012 review conducted by the Utah Criminal Justice Center found that released inmates with serious mental illness experience poorer outcomes overall as they are "twice as likely to have their probation or parole revoked, are at an elevated risk for rearrest, incarceration, and homelessness, lack skills to obtain and sustain employment, and have higher rates of medical problems." [6]

In 2009, the Council of State Governors Justice Center released a report entitled *Improving Outcomes for People with Mental Illnesses under Community Corrections Supervision*, which stated that the reasons for increased recidivism among mental ill offenders may be multifaceted:

Once people with mental illnesses are finally released, it is often extremely difficult for them to successfully transition from incarceration to the community. Their mental illnesses may be linked to community corrections supervision failure in a number of ways. Skeem and Loudon have characterized these links as being *direct, indirect, or spurious*.

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[1] http://www.cdcr.ca.gov/comio/Legislation.html
[2] Steadman, H., Osher, F. C., Robbins, P. C., Case, B., & Samuels, S. (2009). Prevalence of serious mental illness among jail inmates. *Psychiatric Services*, 60(6), 761-765. <http://www.ncbi.nlm.nih.gov/pubmed/19487344>.
[3] Administrative Office of the Courts, Center for Families, Children & the Courts. (2011). *Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report.* <http://www.mentalcompetency.org/resources/guides-standards/files/California%20Mental%20Health%20Task%20Force%20Report.pdf>.
[4] Berkeley Center for Criminal Justice. (2010). *Juvenile Justice Policy Brief Series: Mental Health Issues in California's Juvenile Justice System.* <https://www.law.berkeley.edu/img/BCCJ_Mental_Health_Policy_Brief_May_2010.pdf>
[5] Treatment Advocacy Center & National Sheriffs' Association. (2010). *More Mentally Ill Persons Are in Jails and Prisons Than Hospitals: A Survey of States.*
<http://www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf>
[6] University of Utah, Utah Criminal Justice Center. (2012). *Treating Offenders with Mental Illness: A Review of the Literature.* <http://ucjc.utah.edu/wp-content/uploads/MIO-butters-6-30-12-FINAL.pdf>.

First, mental illnesses may *directly* result in probation or parole revocation. For example, an individual may not access treatment, leading him or her to decompensate, behave in a bizarre or dangerous manner in public, get arrested for this behavior, and have his or her probation revoked.

Second, mental illnesses may *indirectly* result in revocation. For example, an individual with clinical depression may have impaired functioning that prevents him or her from maintaining employment and paying court ordered fines, which are standard conditions of release. Notably, many people with mental illnesses returning to the community from jail or prison lack financial or social supports. Some were receiving Medicaid and other forms of public assistance at the time of their arrest, and these benefits are typically terminated rather than suspended during incarceration, and rarely reinstated immediately upon release. In short, there is often no safety net to compensate for functional impairments that may place individuals with mental illnesses at risk for revocation.

Third, mental illnesses may not result in revocation. Instead, the relationship between the two may be *spurious*—that is, more apparent than real—because a third variable associated with mental illness causes revocation. For example, an individual with bipolar disorder may be at risk of committing a new offense not because of his or her mental illness, but because of criminogenic attitudes or affiliation with antisocial peers. Alternatively, an individual with psychosis may be monitored exceptionally closely and revoked readily by his or her probation officer, given that traditional supervision strategies often reflect misconceptions about (and stigma associated with) mental illness.[7]

CDCR data shows higher rates of recidivism in inmates identified with mental health issues when compared to those without. Upon release, inmates exhibiting mental health problems are assigned one of two mental health services designations: Enhanced Outpatient Program (EOP) or Correctional Clinical Case Management System (CCCMS). Inmates with severe mental illness expected to experience difficulty transitioning out of corrections are designated as EOP and receive treatment at a level similar to day treatment services in the community, while inmates receiving CCCMS services are housed within the general population and participate on an outpatient basis. In the 2012 CDCR Outcome Evaluation Report, 76.7 percent of first-release inmates with an EOP designation recidivated after three years, compared to lower rates found in CCCMS designees (70.6 percent) and those without a designation (62 percent).[8]

According to a 2005 CDCR report, mental health issues "comprised the single most critical gap in juvenile justice services. ... According to those surveyed, the number of at-risk youth and youthful offenders with mental health problems continues to increase as does the seriousness of their mental illnesses. The only thing not increasing is the resources to treat and confine these troubled and troubling youth." Even if juvenile offenders receive assistance, absence of treatment after release may contribute to a path of behavior that includes continued delinquency and adult criminality.[9]

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[7] https://s3.amazonaws.com/static.nicic.gov/Library/023634.pdf.
[8] http://www.cdcr.ca.gov/adult_research_branch/Research_Documents/ARB_FY_0708_Recidivism_Report_10.23.12.pdf.
[9] California Department of Corrections and Rehabilitation. (2005). *Status Report on Juvenile Justice Reform.*

4) **Under Existing Law, Judges Have Discretion to Impose Conditions on Felony or Misdemeanor Cases When a Defendant is Placed on Probation**: Probation is the suspension of the imposition or execution of a sentence and the conditional release of a defendant into the community under the direction of a probation officer. "Probation is generally reserved for convicted criminals whose conditional release into society poses minimal risk to public safety and promotes rehabilitation." (*People v. Carbajal* (1995) 10 Cal.4th 1114,1120.) Probation can be conditioned on serving a period of incarceration in county jail and on conditions reasonably related to the offense. Certain convicted felons are not eligible for probation. Other felons are presumptively ineligible for probation, but may be granted probation in an unusual case.

   The primary considerations in granting probation are: (1) Public safety; (2) the nature of the offense; (3) the interests of justice; (4) the victim's loss; and (5) the defendant's needs. (Pen. Code, § 1202.7.)

   Courts have broad general discretion to fashion and impose additional probation conditions that are particularized to the defendants. *People v. Smith* (2007) 152. Cal.App.4th 1245, 1249. Courts may impose any "reasonable" conditions necessary to secure justice and assist the rehabilitation of the probationer. Under existing law, a judge can impose a condition of probation that a defendant spend a certain amount of time in a residential mental health facility in conjunction with a jail sentence, or as an alternative to a jail sentence. In imposing probation conditions related to mental health, the court is not limited to ordering residential mental health treatment. The court can order outpatient mental health treatment, or other mental health directives the court finds appropriate. When a defendant is placed on probation the court retains jurisdiction over the case to ensure the defendant complies with probation. The court has the power to impose further punishment if the defendant does not comply with probation.

5) **California's Current Sentencing Scheme Does Not Provide an Option for a Judge to Impose a Split Prison Sentence:** Under California's sentencing scheme, if a person is sent to state prison, they are sentenced for a determinate amount of time. Once an individual is sentenced to State Prison they are committed to the custody of CDCR. Once CDCR has custody of a defendant, CDCR, not the court, decides where and in what type of custodial setting the defendant serves their state prison term.

   When a court sentences a defendant to state prison, the court loses jurisdiction over the individual.

   "If the judgment is for imprisonment, 'the defendant must forthwith be committed to the custody of the proper officer and by him or her detained until the judgment is complied with.' The sheriff, upon receipt of the certified abstract of judgment "or minute order thereof," is required to deliver the defendant to the warden of the state prison together with the certified abstract of judgment or minute order. 'It is clear then that at least upon the receipt of the abstract of the judgment by the sheriff, the execution of the judgment is in progress.'

   "Thus, for example, in *People v. Banks*, we considered the effect of a stay of execution in the context of the trial court's authority to grant probation for certain offenses. We observed that upon entry of a guilty plea, if the trial court chooses to retain jurisdiction under the statutes

dealing with probation, it may pronounce judgment and suspend its execution by refraining from issuing a commitment of the defendant to the prison authority. We stated: "The critical requirement for control over the defendant and the rest of the action is that the court shall not have surrendered its jurisdiction in the premises *by committing and delivering the defendant to the prison authority.*" *People v. Karaman*, (1992) 4 Cal.4th 335,345 (citation omitted)(italics added.)

Because the court loses jurisdiction over a defendant when they are sentenced to state prison, it is unclear who would have the authority to enforce transfer of a defendant from a mental health facility to a state prison if treatment in a residential mental health treatment was ordered for a portion of the defendant's sentence at the beginning of the sentence. The same problem would exist if the court sentenced the defendant to begin their term with state prison, but directed the later part of the state prison term to be served in a mental health facility.

For the same jurisdictional reasons, it is unclear what remedies would be available if a defendant left a residential mental health treatment facility after being sentenced to such a facility for a portion of, or all of, a state prison sentence.

6) **Logistical Difficulties of Post Sentencing Procedures to Petition the Court to Resentence the Defendant:** The proposed legislation allows for the defendant or prosecutor to petition the resentence the defendant, and provides that defendants have a right to counsel for those proceedings. From a practical standpoint, appointing counsel for an individual who is in a residential mental health treatment facility presents challenges for a system where most of the defendants are represented by Public Defender Offices. Public Defender Offices are accustomed to visiting and representing clients in custody at the local county jail. To see and represent clients placed in a variety of mental health facilities that can be in disparate geographic regions would present substantial obstacles to such representation. The same obstacles are present if a defendant in state prison required representation on a resentencing.

7) **Suggested Committee Amendments to be Taken in the Future:** Specify that if a judge re-sentences a defendant, the court may not impose a sentence longer than originally imposed.

8) **Argument in Support**: According to *The Steinberg Institute*, "As co-sponsor of AB 2262 (Levine), the Steinberg Institute is starkly aware of the fact that roughly ***half of all prisoners in California are mentally ill*** and have received psychiatric treatment within the past year. Many of these offenders' crimes were directly linked to their mental health condition and the lack of appropriate treatment. According to the U.S. Supreme Court, conditions in California prisons are exacerbating psychiatric disorders of prisoners living with mental illness. When released from custody, parolees with mental illness have a higher recidivism rate compared to healthy parolees, according to the Department of Corrections. This creates a revolving door of high cost individuals remaining in the criminal justice system and not accessing the treatment they need to be-come productive citizens.

"AB 2262, the Mental Health Justice Act, addresses this issue by allowing Superior Courts ***discretion*** when sentencing an offender with a mental illness to include mental health treatment in prison and county jails when in the best interests of the defendant and the community.

"Under current law, when an offender is convicted of a crime, courts have power only over the length of the offender's sentence. Even when mental illness is an obvious component of the offender's crime, courts have no statutory authority to require mental health treatment or

supervision.

"AB 2262 does the following:

"If a defendant has pled guilty or no contest to, or has been convicted of, an offense that will result in a sentence to state prison or county jail, the defendant or the prosecutor may submit evidence, for the courts *consideration* during sentencing, of a defendant's diagnosed mental illness that was a substantial factor that contributed to the defendant's criminal conduct.

"Having considered the evidence submitted and if the court determines that it is in the best interest of public safety, the court ***may*** do one, or more of the following:

"(A) Order that the defendant serve, if the defendant agrees, all or a part of his or her sentence in a residential mental health treatment facility instead of in the state prison or county jail, unless that placement would pose an unreasonable risk of danger to public safety.

"(B) Direct the Department of Corrections and Rehabilitation or county jail authority to place the defendant in a mental health program within the state prison or county jail system, respectively, at a level of care determined to be appropriate by the department's mental health staff or county mental health staff, within 30 days, of the defendant's sentencing.

"(C) Order the Department of Correction and Rehabilitation or the county jail to prepare a post release mental health treatment plan six months prior to the defendant's release to parole or post release community supervision. The treatment plan shall specify the manner in which the defendant will receive mental health treatment services following that release, and shall address, if applicable and in the discretion of the court, medication management, housing, and substance abuse treatment.

"At any time, upon a petition from the defendant or prosecutor, if it is in the public interest, the court may recall a sentence that includes a mental health treatment order issued under this section and either resentence the defendant to any other mental health treatment authorized under subdivision (c) or resentence the defendant in the same manner as if he or she had not previously been sentenced with application of this section, provided that the initial sentence, and the defendant receives credit for the time he or she served.

"Simply locking people up with mental illness does not make sense from an outcomes standpoint, or from a civil rights perspective for that matter. We believe AB 2262 can help to mitigate the state's current struggle to treat offenders with a mental health diagnosis in prison and county jails, especially as people with mental illness are far less likely to commit a crime, violate prison rules, or recidivate if they are receiving high quality treatment."

"California has made great strides over the past ten years improving the lives of individuals with severe mental illness through the Mental Health Services Act and subsequent legislative reforms to the mental health system. However, despite all the progress we have made, there still remains a great deal of work to be done. AB 2262 helps ensure the courts have appropriate and cost-effective sentencing options and that offenders who suffer from a diagnosable mental illness receive the care they need."

9) **Argument in Opposition**: According to *The California District Attorneys Association*, "Beyond our concerns with the timing, frequency, and nature of the evidence being presented, we object to this bill's attempt to place the trial court judge in the role of mental

health expert – a role that they likely have neither the training, nor the inclination to carry out. Courts already have the authority to order a hearing to determine whether a defendant is mentally competent to stand trial, and now would be put in the position of evaluating evidence of mental illness to determine appropriate placements and programming for these individuals. We do not believe the court should be involved in post-conviction treatment issues.

"While the initial blurring of the lines between judge and mental health evaluator is of great concern at the time of sentencing, so too is the continuing jurisdiction that the court would retain over every one of these cases as a result of the bill allowing defendants and prosecutors to return to the court 'at any time' for a change in the placement order or discharge plans. This puts an unknown, but significant, burden on trial court resources, and marks a drastic departure from the traditional role of the court.

"Finally, we believe that the determination of whether a convicted defendant would pose an unreasonable risk of danger to public safety, for purposes of determining eligibility for residential mental health treatment, is based on an unreachable standard. Penal Code section 1170.18(c) currently defines "unreasonable risk of danger to public safety" as an unreasonable risk that the person will commit one of the few enumerated violent felonies in PC 667(e)(2)(C)(iv).

"Those crimes are limited to sexually violent offenses, murder, certain sex crimes with children under 14 years old, assault with a machine gun on a peace officer, possession of weapons of mass destruction, or a crime punishable by death or life imprisonment. Put another way, those crimes do not include, and it would not be enough to show a likelihood that the individual would commit, any of the following violent offenses (and this is a partial list):

- Carjacking
- Armed robbery
- Assault on a peace officer with something other than a machine gun
- Most felonies in which the defendant personally uses a firearm
- Assault with a deadly weapon by an inmate
- Kidnapping
- Holding a hostage by a state prison inmate
- A felony where the defendant personally inflicted great bodily injury

"Moreover, to be eligible for residential mental health treatment, the defendant must not be subject to the Three Strikes Law. So, in order to render someone ineligible to serve their sentence in a residential facility, a court would have to determine that someone who has not committed a strike in the past, now poses an unreasonable risk of committing one of these few heinous offenses in the future.

"There are no tests, no assessments, and no fortune-telling devices that foresee when a person is likely to commit a murder, or a rape, or possess a weapon of mass destruction. Even the most finely tuned assessment tool, at best, can say that an offender has a likelihood of violently recidivating – but not which type of crime he or she will commit. These assessment tools are simply scales based on other offenders with similar characteristics and backgrounds – essentially a criminal actuarial table. They can predict a possibility of committing a crime

in the future compared to others with the same data points, but cannot predict which crime or whether the crime will occur. Nor are they intended for this purpose, but as a guide to assist in planning the appropriate level of supervision and treatment to reduce that likelihood to recidivate.

"Surely there is a use for these tools under the model contemplated by AB 2262, but it should not be to predict whether someone will commit a particular, fact-specific offense as criteria for a placement in a lower security facility.

"In practice, we believe that the "unreasonable risk" standard is insufficient to ensure that violent individuals are not placed in residential treatment facilities."

10) **Related Legislation**: AB 1006 (Levine), of the 2015-2016 Legislative Session, would have allowed the court to order the defendant to serve part of his or her sentence in a residential mental health treatment facility or order the defendant placed in a mental health program in the state prison or county jail, if the defendant had a diagnosable mental condition. AB 1006 was held in the Assembly Appropriations Committee.

11) **Prior Legislation**: SB 1323 (Cedillo), of the 2005-2006 Legislative Session, would have appropriated $350,000 from the General Fund for allocation, over 5 years, to the County of Los Angeles, for the purpose of funding one position to work, in conjunction with the Los Angeles County Superior Court, on a 5-year Prototype Court Pilot Program for nonviolent felony offenders in the state who have been identified as having both serious mental health and substance abuse problems. SB 1323 was held in Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Steinberg Institute (Co-sponsor)
National Alliance on Mental Illness, California
1 Private Individual

Opposition

California District Attorneys Association
Alameda County District Attorney

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2327 (Cooley) – As Amended March 28, 2016

SUMMARY: Expands the crime of communicating with a minor with the intent to commit specified sexual offenses with the minor to include attempting to contact or communicating with a minor with the intent to commit human trafficking.

EXISTING LAW:

1) Specifies that every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit any of the following offenses involving the minor shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense. The offenses included in this section are listed as follows: (Pen. Code §, 288.3, subd. (a).)

    a) Kidnapping;

    b) Kidnapping for ransom, reward, extortion, robbery, or rape;

    c) Rape;

    d) Rape by a foreign object;

    e) Willful harm or injury to a child;

    f) Sodomy;

    g) Lewd and lascivious acts with a minor;

    h) Oral copulation;

    i) Harmful matter sent to minor;

    j) Forcible sexual penetration; and

    k) Child pornography.

2) Provides that the punishment for the offense of contacting or communicating with a minor is the same as an attempt to commit the crime. (Pen. Code §, 288.3, subd. (a).) California criminal law dictates that the punishment for attempt is generally one half the sentence of the

completed crime. (Pen. Code § 664.)

3) Specifies that "contacts or communicates with" shall include direct and indirect contact or communication that may be achieved personally or by use of an agent or agency, any print medium, any postal service, a common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications device or system. (Pen. Code §, 288.3, subd. (b).)

4) Provides that a person convicted of a violation of contacting or communicating with a minor who has previously been convicted of a violation the same offense shall be punished by an additional and consecutive term of imprisonment in the state prison for five years. (Pen. Code §, 288.3, subd. (c).)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "Human trafficking is a profitable criminal industry. Unlike selling drugs, buying and selling human beings is a crime that can repeat itself multiple times. It is estimated that every year approximately 500,000 American youth are at-risk for being sold for sex in the United States. Traffickers and exploiters who prey on children know no boundaries; they are near schools, shopping malls, parks, foster homes, and online. Child trafficking criminals are making use of online resources, using technology to target their audience more efficiently. AB 2327 helps law enforcement target traffickers and 'Johns' more efficiently for their participation in this industry."

2) **Human Trafficking Generally:** Human trafficking involves the recruitment, transportation or sale of people for forced labor. Through violence, threats and coercion, victims are forced to work in, among other things, the sex trade, domestic labor, factories, hotels and agriculture. According to the January 2005 United States Department of State's Human Smuggling and Trafficking Center report, "Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking", there is an estimated 600,000 to 800,000 men, women and children trafficked across international borders each year. Of these, approximately 80% are women and girls and up to 50% are minors. A recent report by the Human Rights Center at the University of California, Berkeley cited 57 cases of forced labor in California between 1998 and 2003, with over 500 victims. The report, "Freedom Denied", notes most of the victims in California were from Thailand, Mexico, and Russia and had been forced to work as prostitutes, domestic slaves, farm laborers or sweatshop employees. (University of California, Berkeley Human Rights Center, "Freedom Denied: Forced Labor in California" (February, 2005).) According to the author:

   "While the clandestine nature of human trafficking makes it enormously difficult to accurately track how many people are affected, the United States government estimates that about 17,000 to 20,000 women, men and children are trafficked into the United States each year, meaning there may be as many as 100,000 to 200,000 people in the United States working as modern slaves in homes, sweatshops, brothels, agricultural fields, construction projects and restaurants."

   In 2012, Californians voted to pass Proposition 35, which modified many provisions of

California's already tough human trafficking laws. The proposition increased criminal penalties for human trafficking, including prison sentences up to 15-years-to-life and fines up to $1,500,000. Additionally, the proposition specified that the fines collected are to be used for victim services and law enforcement. Proposition 35 requires persons convicted of trafficking to register as sex offenders. Proposition 35 prohibits evidence from being used against a victim in court proceedings if that victim engaged in sexual conduct. Additionally, the proposition lowered the evidential requirements for showing of force in cases of minors.

a) **Trafficking Victims Protection Act of 2000 (22 USC Sections 7101 *et seq.*):** In October 2000, the Trafficking Victims Protection Act of 2000 (TVPA) was enacted and is comprehensive, addressing the various ways of combating trafficking, including prevention, protection and prosecution. The prevention measures include the authorization of educational and public awareness programs. Protection and assistance for victims of trafficking include making housing, educational, health-care, job training and other federally funded social service programs available to assist victims in rebuilding their lives. Finally, the TVPA provides law enforcement with tools to strengthen the prosecution and punishment of traffickers, making human trafficking a federal crime.

b) **Recent Update to Human Trafficking Laws:** In 2012, Californians voted to pass Proposition 35, which modified many provisions of California's already tough human trafficking laws. Specifically, Proposition 35 increased criminal penalties for human trafficking offenses, including prison sentences up to 15-years-to-life and fines up to $1.5 million. The proposition specified that the fines collected are to be used for victim services and law enforcement. In criminal trials, the proposition prohibits the use of evidence that a person was involved in criminal sexual conduct (such as prostitution) to prosecute that person for that crime if the conduct was a result of being a victim of human trafficking, and makes evidence of sexual conduct by a victim of human trafficking inadmissible for the purposes of attacking the victim's credibility or character in court. The proposition lowered the evidentiary requirements for showing of force in cases of minors.

   Proposition 35 also requires persons convicted of human trafficking to register as sex offenders and expanded registration requirements by requiring registered sex offenders to provide the names of their internet providers and identifiers, such as e-mail addresses, user names, and screen names, to local police or sheriff's departments. After passage of Proposition 35, plaintiffs American Civil Liberties Union and Electronic Frontier Foundation filed a law suit claiming that these provisions unconstitutionally restricts the First Amendment rights of registered sex offenders in the states. A United States District Court judge granted a preliminary injunction prohibiting the implementation or enforcement of Proposition 35's provisions that require registered sex offenders to provide certain information concerning their Internet use to law enforcement. (*Doe v. Harris* (N.D. Cal., Jan. 11, 2013, No. C12-5713) 2013 LEXIS 5428.)

3) **Argument in Support**: According to the *Alameda District Attorney's Office*, "Existing law makes it a crime to contact or communicate with a minor with the intent to commit several child sexual assault related crimes such as child pornography, child abuse, and child sexual assault. This bill adds sexual contact with a minor victim of human trafficking. We have seen a growing use of the internet to lure children into a destructive, assaultive situation

where the sexual exploitation and sexual assault can occur. This bill protects children from those who lure children for the perpetrators own sexual gratification.

"The Alameda County District Attorney's Office has been in the forefront on a state and national level, combating child sexual abuse and exploitation. Since 2005, we have been leading the state and national effort to educate and bring awareness to communities and policy makers that far too many of children are being trafficked and exploited. Through H.E.A.T. Watch, and the H.E.A.T. Institute, we have increased the focus on the purchasers.

"Existing law makes it a crime to contact a minor with the intent to commit an offense involving that minor including kidnapping and rape. AB 2327 simply includes human trafficking to the list of offenses."

4) **Argument in Opposition:** According to the *American Civil Liberties Union*, "given that a person can already be convicted and punished for engaging in the conduct contemplated in this bill, and given that our prisons and jails are already overcrowded and draining precious public safety resources, this bill appears unwise and unnecessary."

5) **Prior Legislation**: SB 1128 (Alquist), Chapter 337, Statutes of 2006, created the "Sex Offender Punishment, Control and Containment Act of 2006" which makes several changes to the law relating to sex offenders. These included creating this section.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office (sponsor)
Association for Los Angeles Deputy Sheriffs
California Association of Code Enforcement Officers
California Narcotic Officers Association
California District Attorneys Association
California State Sheriffs Association
Los Angeles Police Protective League
Los Angeles Professional Peace Officers Association
Peace Officers Research Association of California
Riverside Sheriffs Association

Opposition

American Civil Liberties Union, California
California Attorneys for Criminal Justice

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2340 (Gallagher) – As Introduced February 18, 2016

SUMMARY: Exempts persons holding valid licenses to carry a concealed firearm (CCW) who are also protected by a domestic violence protective order from both the school zone and the university prohibitions from possessing a firearm on a school zone campus.

EXISTING LAW:

1) Creates the Gun-Free School Zone Act of 1995. (Pen. Code, § 626.9 subd. (a).)

2) Defines a "school zone" to means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, or within a distance of 1,000 feet from the grounds of the public or private school. (Pen. Code, § 626.9, subd. (e).)

3) Provides that any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, unless it is with the written permission of the school district superintendent, or equivalent school authority, is punished as follows: (Pen. Code, § 626.9, subds. (f)-(i).)

   a) Any person who possesses a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, is subject to imprisonment for two, three, or five years.

   b) Any person who possesses a firearm within a distance of 1,000 feet from a public or private school providing instruction in kindergarten or grades 1 to 12, is subject to:

      i) Imprisonment in a county jail for not more than one year or by imprisonment for two, three, or five years; or,

      ii) Imprisonment for two, three, or five years, if any of the following circumstances apply:

         (1) If the person previously has been convicted of any felony, or of any specified crime.

         (2) If the person is within a class of persons prohibited from possessing or acquiring a firearm, as specified.

         (3) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony, as specified.

c) Any person who, with reckless disregard for the safety of another, discharges, or attempts to discharge, a firearm in a school zone shall be punished by imprisonment for three, five, or seven years.

d) Every person convicted under this section for a misdemeanor violation who has been convicted previously of a misdemeanor offense, as specified, must be imprisoned in a county jail for not less than three months.

e) Every person convicted under this section of a felony violation who has been convicted previously of a misdemeanor offense as specified, if probation is granted or if the execution of sentence is suspended, he or she must be imprisoned in a county jail for not less than three months.

f) Every person convicted under this section for a felony violation who has been convicted previously of any felony, as specified, if probation is granted or if the execution or imposition of sentence is suspended, he or she must be imprisoned in a county jail for not less than three months.

g) Any person who brings or possesses a loaded firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, without the written permission of the university or college president, his or her designee, or equivalent university or college authority, must be punished by imprisonment for two, three, or four years.

h) Any person who brings or possesses a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, without the written permission of the university or college president, his or her designee, or equivalent university or college authority, must be punished by imprisonment for one, two, or three years.

4) States that the Gun-Free School Zone Act of 1995 does not apply to possession of a firearm under any of the following circumstances: (Pen. Code, § 626.9, subd. (c).)

a) Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.

b) When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle.

c) The lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.

d) When the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety, as specified.

e) When the person is exempt from the prohibition against carrying a concealed firearm, as specified.

5) States that the Gun-Free School Zone Act of 1995 does not apply to: (Pen. Code, § 626.9, subd. (l).)

   a) A duly appointed peace officer;

   b) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California;

   c) Any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer;

   d) A member of the military forces of this state or of the United States who is engaged in the performance of his or her duties;

   e) A person holding a valid license to carry a concealed firearm;

   f) An armored vehicle guard, engaged in the performance of his or her duties, as specified;

   g) A security guard authorized to carry a loaded firearm;

   h) An honorably retired peace officer authorized to carry a concealed or loaded firearm; or,

   i) An existing shooting range at a public or private school or university or college campus.

6) Specifies that unless it is with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting within the scope of their duties or persons exempted under specified peace officer exceptions to concealed weapons prohibitions. Exempts the following persons: (Pen. Code, § 626.9, subd. (l).)

   a) A duly appointed peace officer as defined.

   b) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California.

   c) Any person summoned by any of these officers to assist in making an arrest or preserving the peace while that person is actually engaged in assisting the officer.

   d) A member of the military forces of this state or of the United States who is engaged in the performance of that person's duties.

   e) A person holding a valid license to carry the firearm.

   f) An armored vehicle guard, who is engaged in the performance of that person's duties.

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "victims of domestic should be able to protect themselves at all times. Preventing victims who possess a valid CCW permits from carrying firearms on school grounds will only make them more vulnerable to abuse and attacks."

2) **Persons with Concealed Carry Permits may Carry Weapons on School Grounds if Authorized by School Officials:** Under the existing code section for the Gun-Free School Zone Act, any person can possess a concealed weapon on school grounds provided that they have permission from school officials. The relevant code sections read as follows:

> "[A]ny person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, ***unless it is with the written permission of the school district superintendent, or equivalent school authority***, is punished..." (Pen. Code, § 626.9, subd (b).) (emphasis added.)
>
> "***Unless it is with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority***, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers in the scope of their duties." (Pen. Code, § 30310, subd. (a).) (emphasis added.)

The legislature has made a policy decision, that persons may carry firearms on school grounds with the written permission of school officials. The reason for this is to enhance public safety. Specifically, it is in the interests of public safety that school officials know that firearms are being carried on school grounds. Additionally, if a person has a domestic violence restraining order and the feel the need to carry a concealed weapon at work to defend themselves, school officials should know that danger is looming as well.

3) **Gun-Free School Zone Act of 1995:** Enacted by AB 645 (Allen), Chapter 1015, Statutes of 1994, the Gun-Free School Zone Act, hereafter referred to as the "Act," generally provides that any person who possesses, discharges, or attempts to discharge a firearm, in a place that the person knows, or reasonably should know, is a within a distance of 1,000 feet from the grounds of any public or private school, kindergarten or Grades 1 to 12, (a "school zone"), without written permission, may be found guilty of a felony or misdemeanor and is subject to a term in county jail or state prison.

The Act does not require that notices be posted regarding prohibited conduct under the Act; therefore, it is incumbent on the individual possessing the firearm to be knowledgeable of and adhere to the Act.

A "school zone" is defined as an area in, or on the grounds of, a public or private school providing instruction in kindergarten or Grades 1 to 12, inclusive, and within a distance of 1,000 feet from the grounds of the public or private school. The Act also provides specific definitions of a "loaded" firearm and a "locked container" for securing firearms.

4) **Argument in Support**: According to *Safari Club International*, "it is considered appropriate that persons possessing a permit to carry a concealed weapon (CCW) who are issued a protective order based on a threat of domestic violence be able to defend themselves if necessary while being in a school zone. They should be able to carry their concealed firearm wherever they go. Otherwise, they would be left defenseless if assaulted while within a school zone."

5) **Argument in Opposition**: According to *The California Chapters of the Brady Campaign to Prevent Gun Violence,* "In furtherance of our goal to reduce firearm violence in our communities, including on school grounds and college campuses, the California Brady Campaign Chapters are taking an oppose position to your bill, AB 2340.

"Legislation was enacted last year (SB 707) that prohibits persons holding a valid license to carry a concealed and loaded weapon (CCW) to bring the gun on the grounds of a K-12 school or on the campus of a university or college. Firearms, including concealed, loaded handguns, can still be allowed on school grounds or campuses with the written permission of school officials. AB 2340 would exempt CCW holders who are protected by a domestic violence protective order from the prohibition. Such person would also be exempt from the prohibition on carrying ammunition onto school grounds. The reasons for prohibiting CCW holders from carrying guns on school grounds and campuses have not changed since last year and apply to AB 2340.

"Under existing law, county sheriffs issue CCW permits and thereby determine who may carry a concealed, loaded gun on school grounds or campuses. Although there is a big variance in standards for issuing CCW permits among sheriffs, a permit is valid in any county in the state. Under AB 2340, a person who obtained a CWW permit in a rural county could be carrying a loaded gun on a campus in an urban setting. The Brady Campaign strongly believes that the discretion to allow hidden, loaded guns on a school grounds and college or university campuses must ultimately lie with school authorities, who bear the responsibility for the well-being and safety of their students.

"Moreover, it is very important for school authorities to know who has a loaded, hidden gun on campus. It has become standard practice for schools to prepare for a campus shooting incident. Active shooter drills are conducted and procedures are developed in collaboration with local law enforcement agencies. In a real school shooting, the presence of an armed person, who is unaware of the preparedness plan and whose intent may be unknown, adds unnecessary confusion and risk to the situation.

"The Violence Policy Center has documented homicides, suicides, accidental shootings and at least 29 mass shootings (since May 2007) committed by CCW license holders. Under existing law, they cannot carry their guns in many sensitive places. Similarly, those CCW permit holders who are also protected by a domestic violence protective order cannot carry their gun in many locations and schools should be no different.

"If a person feels threatened to the point where she or he feels the need to have a gun for a potential shootout, then that person should not be on school grounds or a college campus. Young children or older students could be killed in the crossfire. Safely using a firearm in such an emotionally charged or stressful situation would be difficult and would put many at great risk of being shot."

6) **Prior Legislation**:

a) SB 707 (Wolk), Chapter 766, Statutes of 2015, specified that persons who possess a concealed weapons permit may not possess that firearm on school grounds as specified.

b) AB 2609 (Lampert), Chapter 115, Statutes of 1998, clarified the Gun Free School Zone Act (Act) to forbid the bringing or possession of any firearm on the grounds of, or in any buildings owned or operated by a public or private university or college used for the purpose of student housing, teaching, research or administration, that are contiguous or are clearly marked university property. Exempts specified law enforcement and security personnel.

c) AB 624 (Allen), Chapter 659, Statutes of 1995, passed the Gun-Free School Zone Act of 1995.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rifle and Pistol Association
California Sportsmen's Lobby, Inc.
National Rifle Association of America
Outdoor Sportsmen's Coalition of California
Peace Officer Research Association of California
Safari Club International

Opposition

California Chapters of the Brady Campaign to Prevent Gun Violence
California Federation of Teachers
Law Center to Prevent Gun Violence

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2367 (Cooley) – As Amended March 28, 2016

SUMMARY: Authorizes the court to order a person convicted of a Driving Under the Influence (DUI) offense with one of more DUI priors within 10 years, to enroll, participate in, and successfully complete, a qualified "24/7 Sobriety" monitoring program, as defined, as a condition of probation. Specifically, **this bill**:

1) Specifies that the court may order a person convicted of a violation of DUI or DUI with injury to enroll, participate in, and successfully complete, a qualified "24/7 Sobriety" monitoring program as a condition of probation, if the program is available and deemed appropriate, and the person has one or more prior convictions for a violation of DUI or DUI with injury within a 10 year period.

2) States that a "24/7 Sobriety program" requires a person in the program to abstain from alcohol and requires the person to be subject to frequent testing with certain but modest punishment for violations.

3) Requires a "24/7 Sobriety program" to be evidence-based and approved by the Department of Motor Vehicles (DMV).

4) States that persons ordered into a "24/7 Sobriety program" may also be required to participate in other driving-under-the-influence programs as provided law.

5) Requires a "24/7 Sobriety program" to be licensed, as specified.

6) Specifies that an "evidence-based program" means a program that satisfies the requirements of at least two of the following:

   a) The program is included in the federal registry of evidence-based programs and practices;

   b) The program has been reported in a peer-reviewed journal as having positive effects on the primary targeted outcome; or

   c) The program has been documented as effective by informed experts and other sources.

7) Specifies that the program may monitor alcohol through one or more of the following modalities, as the court deems appropriate:

   a) Breath testing, twice a day;

b) Continuous transdermal alcohol monitoring in cases of hardship; and

c) Random blood, breath, urine, or oral fluid testing.

8) States that testing locations that provide the best ability to sanction a violation as close in time as reasonably feasible to the occurrence of the violation should be given preference.

9) Requires each person to pay "24/7 Sobriety program" costs commensurate with the person's ability to pay, as specified.

10) Requires the court, in establishing reporting requirements, to consult with the county probation department.

11) Requires DMV to study and report to the Legislature by January 1, 2020, on the success of the 24/7 Sobriety program in reducing the driving-under-the-influence recidivism rate in counties where it is used.

12) Provides that this section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

EXISTING LAW:

1) States that if the court grants probation to a person punished as a second DUI within 10 years, in addition to any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in county jail and fined under either of the following:

   a) For at least 10 days, but not more than one year, and pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000); or (Veh. Code, § 23142, subd. (a)(1)(A).)

   b) For at least 96 hours, but not more than one year, and pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000). A sentence of 96 hours of confinement shall be served in two increments consisting of a continuous 48 hours each. The two 48-hour increments may be served nonconsecutively. (Veh. Code, § 23142, subd. (a)(1)(b).)

2) Requires the person's privilege to operate a motor vehicle to be suspended by DMV as specified. (Veh. Code, § 23142, subd. (a)(2).)

3) States that the court shall require the person convicted of a second DUI to do either of the following:

   a) Enroll and participate, for at least 18 months subsequent to the date of the underlying violation, in a driving-under-the-influence program licensed, as specified, as designated by the court; or (Veh. Code, § 23142, subd. (b)(1).)

   b) Enroll and participate, for at least 30 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a driving-under-the-influence

program licensed, as specified. (Veh. Code, § 23142, subd. (b)(2).)

4) Requires the court to advise the person at the time of sentencing that the driving privilege shall not be restored until proof satisfactory to the DMV of successful completion of a driving-under-the-influence program of the length required has been received in the department's headquarters. (Veh. Code, § 23142, subd. (c).)

5) States that when considering the circumstances taken as a whole, the court determines that the person punished with a second DUI would present a traffic safety or public safety risk if authorized to operate a motor vehicle during the period of suspension imposed, as specified, the court may disallow the issuance of a restricted driver's license. (Veh. Code, § 23142, subd. (d).)

6) Provides that if the court grants probation to any person punished for a third DUI in 10 years, in addition any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in the county jail for at least 120 days but not more than one year and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). (Veh. Code, § 23148, subd. (a)(1).)

7) Requires the person's privilege to operate a motor vehicle to be revoked by DMV, as specified. (Veh. Code, § 23148, subd. (a)(2).)

8) Specifies that if the court grants probation to any person punished with a third DUI, the court may order as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a driving-under-the-influence program licensed, as specified. (Veh. Code, § 23148, subd. (b).)

9) Provides that if the court orders a program of at least 30 months, the court as an alternative to the minimum term of imprisonment for a third DUI, the court shall impose as a condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. (Veh. Code, § 23148, subd. (b).

10) Specifies that unless the court has imposed a longer program, the court shall impose as a condition of probation on a third DUI, that the person, subsequent to the date of the current violation, enroll and participate, for at least 18 months, in a driving-under-the-influence program licensed, as specified. (Veh. Code, § 23148, subd. (c).)

11) States that any person who has previously completed a 12-month or 18-month program shall not be eligible for referral, as specified, unless a 30-month licensed driving-under-the-influence program is not available for referral in the county of the person's residence or employment. (Veh. Code, § 23148, subd. (c).)

12) Requires the court to advise the person at the time of sentencing on a third DUI that the driving privilege may not be restored until the person provides proof satisfactory to the department of successful completion of a driving-under-the-influence program of the length required. (Veh. Code, § 23148, subd. (d).)

13) Specifies that if a person is convicted of a violation of Section DUI or DUI with injury, the court shall consider a concentration of alcohol in the person's blood of 0.15 percent or more, by weight, or the refusal of the person to take a chemical test, as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation. (Veh. Code § 23578.)

14) States that the court shall also impose as a condition of probation, upon conviction of a first DUI, that the driver shall complete a DUI program, licensed as specified, in the driver's county of residence or employment, as designated by the court. (Veh. Code § 23538, subd. (b).)

15) Requires the court to order a first DUI offender whose blood-alcohol concentration was less than 0.20 percent, by weight, to participate for at least three months or longer, as ordered by the court, in a licensed program that consists of at least 30 hours of program activities. (Veh. Code § 23538, subd. (b)(1).)

16) Requires the court to order a first DUI offender whose blood-alcohol concentration was 0.20 percent or more, by weight, or who refused to take a chemical test, to participate for at least nine months or longer, as ordered by the court, in a licensed program that consists of at least 60 hours of program activities. (Veh. Code § 23538, subd. (b)(2).)

17) States that the court shall advise the person at the time of sentencing that the driving privilege shall not be restored until proof satisfactory to the department of successful completion of a DUI program of the length required under this code that is licensed , as specified, has been received in the department's headquarters. (Veh. Code § 23538, subd. (b)(3).)

18) Requires the court to refer a first time DUI offender whose concentration of alcohol in his or her blood was less than 0.20 percent, by weight, to participate for at least three months or longer, as a condition of probation, in a licensed program that consists of at least 30 hours of program activities. (Health & Saf. Code § 11837, subd. (c)(1).)

19) Requires the court to order a first time DUI offender whose concentration of alcohol in the person's blood was 0.20 percent or more, or the person refused to take a chemical test, to participate, for at least nine months or longer, as ordered by the court, in a licensed program that consists of at least 60 hours of program activities, as a condition of probation. (Health & Saf. Code § 11837, subd. (c)(2).)

20) Allows the State Department of Health Care Services to specify in regulations the activities required to be provided in the treatment of participants receiving nine months of licensed program services. (Health & Saf. Code § 11837, subd. (d).)

21) Specifies that "probation" means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. (Pen. Code, § 1203(a).)

22) Specifies that "conditional sentence" means the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer. (Pen. Code, §

1203(a).)

23) Provides that the court, in granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as specified, and upon those terms and conditions as it shall determine. (Pen. Code, § 1203.1.)

24) States that the court may impose and require any or all of the terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. (Pen. Code, § 1203.1, subd. (j).)

25) Specifies that the defendant shall not be released from custody under his or her own recognizance until the defendant files a signed release agreement which includes the defendant's promise to obey all reasonable conditions imposed by the court or magistrate. (Pen. Code, § 1318, subd. (a)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In California, forty percent of all traffic-related fatalities involve alcohol—this is higher than the rate nationwide. Critically, nearly one-third of those convicted for driving under the influence (DUI) re-offend.

"In an effort to add to the toolkit of options available to judges, AB 2367 authorizes a court to order a person convicted of multiple DUIs to successfully complete a qualified '24/7 Sobriety' monitoring program as a condition of their probation or release.

"24/7 Sobriety programs require individuals to abstain from alcohol for normally 90-180 days and are subject to frequent testing. If they test positive for alcohol use, there are swift, certain and modest sanctions—typically a day or two in jail.

"24/7 Sobriety began as a pilot program in South Dakota in 2005 and required those convicted of alcohol-related offenses to take twice-a-day breathalyzer tests or wear a continuous alcohol monitoring bracelet. After a five-county pilot project, the program grew to include more jurisdictions and offenses. By the end of 2013, studies found that the total number of repeat driving under the influence arrests in counties operating the program fell by twelve percent, and the total number of arrests for domestic violence dropped by nine percent. Subsequently, 24/7 sobriety programs have been implemented in several additional states. In addition, Congress recently approved additional federal grant money for startup and administrative costs of a 24/7 program."

2) **Fixing America's Surface Transportation (FAST) Act:** In December of 2015, President Obama signed FAST Act, a comprehensive highway bill. Part of the FAST Act provided incentive grants for states to use 24/7 sobriety programs. The FAST Act also laid out the federal criteria for 24/7 sobriety programs.

   Under the FAST Act, a 24/7 Sobriety Program must:

   a) Require an individual who plead guilty or was convicted of driving under the influence of alcohol or drugs to totally abstain from alcohol or drugs for a period of time; and

   b) Require the individual to be subject to testing for alcohol or drugs as follows:

      i) at least twice per day; or

      ii) by continuous transdermal alcohol monitoring via an electronic monitoring device; or

      iii) by an alternate method with the concurrence of the Secretary of Transportation.

   Those criteria are codified in 23 U.S.C. 405.

   This bill defines 24/7 sobriety programs consistently with the federal criteria.

3) **Courts General Power to Impose Conditions of Probation:** Courts have broad general discretion to fashion and impose additional probation conditions that are particularized to the defendant. (*People v. Smith* (2007) 152, Cal.App.4th 1245, 1249.) Courts may impose any "reasonable conditions" necessary to secure justice, make amends to society and individuals injured by the defendant's unlawful conduct, and assist the "reformation and rehabilitation of the probationer." (Pen. Code, § 1203.1.) A valid condition must be reasonably related to the offense and aimed at deterring such misconduct in the future. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

4) **Courts Are Already Using Alcohol and Drug Monitoring in Conjunction with Probation:** Courts are already imposing conditions of probation which limit or prohibit the use of alcohol or other drugs. They are imposing such condition under their existing discretion to fashion reasonable conditions related to the defendant's criminal conduct and rehabilitative needs. Courts can utilize programs provided through their county probation department, private companies, or non-profit organizations. One private company which is already providing services that are consistent with 24/7 sobriety programs is Leaders in Community Alternatives (LCA). LCA operates in Northern and Southern California. LCA provides a range of supervision services for individuals on probation or pretrial release. LCA's services include continuous alcohol monitoring and testing for controlled substances. Continuous alcohol monitoring is a form alcohol monitoring which is consistent with the 24/7 sobriety program mentioned in this bill. Courts are currently using alcohol monitoring through LCA or similar programs without specific authorization from the Legislature through the court's general power to impose probation conditions related to the offense for which the defendant was convicted.

5) **Evidence Based Practices: Evidence based practice** is the use of systematic decision-making processes or provision of services which have been shown, through available

scientific evidence, to consistently improve measurable outcomes. Instead of tradition, gut reaction or single observations as the basis for making decisions, **evidence based practice** relies on collected data. (https://depts.washington.edu/pbhjp/evidence-based-practice-institute/what-evidence-based-practice)

Evidence based treatments are interventions which have scientific findings to demonstrate their effectiveness or efficacy in improving outcomes. Treatments are often placed along a continuum of support based on the rigorousness and amount of supporting research ranging from treatments which have strong support to those which are untested to those which have produced negative outcomes. Data sources used to make these evidence determinations include randomized experiments, which compare treatment with a control or placebo group or compare the treatment with another already established treatment; and single case design experiments which compare an individual subject's baseline with their response to treatment. (Id.)

One component of this bill is a study requirement. This bill directs Department of Motor Vehicles to prepare a study the use of 24/7 sobriety programs to be delivered by January 1, 2020. The study would gather data from across the state and provide analysis as to whether 24/7 sobriety programs are effective in California from the standpoint of evidence based practices.

6) **Argument in Support**: According to *Keith Humphrey, Ph.D.*, "During my time as Senior Policy Advisor in the White House Office of National Drug Control Policy, the Obama Administration endorsed 24/7 Sobriety as an evidence-based method of decreasing incarceration while at the same time reducing substance abuse and keeping the public safe. As you no doubt know, many California correction facilities are overcrowded in part because many individuals are incarcerated for alcohol-fueled crimes (including but certainly not limited to drunk driving). The 24/7 Sobriety program gives police, judges and communities a different way to handle such offenders that is humane, effective and reduces crowding in correctional facilities."

7) **Argument in Opposition**: According to *Legal Services for Prisoners with Children*, "We believe that 24/7 Sobriety program contemplated by AB 2367 would not only fail to address the public safety hazard caused by intoxicated driving, but would actually create more problems than it solves by leading to increased incarceration. Existing law already provides stiff penalties, including fines, imprisonment, and the suspension of one's drivers' license, for driving under the influence of alcohol. There is no evidence to suggest that increased criminal penalties would have any deterrent effect on those who would consider driving under the influence.

"Furthermore, the zero-tolerance approach of the 24/7 Sobriety program flies in the face of medical science which identifies alcoholism as a disease. There can never be an effective law enforcement solution to a medical problem. Instead of passing ever-more punitive laws in order to punish people struggling with alcoholism. California should put resources into public education and voluntary drug and alcohol treatment programs."

8) **Prior Legislation**: AB 1832 (Bermudez), of the 2005-2006 Legislative Session, would have made legislative findings and declarations concerning the usefulness of continuous remote

alcohol monitoring systems. AB 1832 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Alcohol Justice
Automobile Club of Southern California
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California Narcotic Officers Association
Intoximeters
Florida Association of DUI Programs
Los Angeles County Professional Peace Officers Association
Los Angeles Deputy Sheriffs Association
Los Angeles Police Protective League
Riverside Sheriffs Association
We Save Lives
2 private individuals

Opposition

Legal Services for Prisoners with Children
California Attorneys for Criminal Justice

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2369 (Patterson) – As Amended March 28, 2016
As Proposed to be Amended in Committee

SUMMARY: Limits Proposition 47 by making persons convicted of crimes reduced to misdemeanors under the provisions eligible for felony prosecution and sentencing if convicted of those crimes three times within a three-year period. Specifically, **this bill**:

1) Provides that if a person has been convicted of specified misdemeanor violations, he or she may be punished either by imprisonment for not more than one year in county jail, or by imprisonment pursuant to realignment, if the following conditions are met:

    a) The person has previously been convicted of those same crimes two or more times; and,

    b) Those prior crimes were committed within 36 months of the date of the commission of the current qualifying crime.

2) Applies this enhanced sentence to all the crimes reduced to misdemeanors under Proposition 47.

3) Provides that a person who has been convicted of petty theft may be punished either by imprisonment for not more than one year in county jail, or by imprisonment pursuant to realignment, if the following conditions were met:

    a) The person has been convicted twice or more of any combination of the following crimes:

        i) Petty theft,

        ii) Grand theft,

        iii) Auto theft (as specified),

        iv) Burglary,

        v) Carjacking,

        vi) Robbery, or

        vii) Felony receiving stolen property; and,

b) Those prior crimes were committed within 36 months of the date of the commission of the current petty theft charge.

4) Calls for a special election for voter approval of these provisions.

EXISTING LAW:

1) Divides theft into two degrees, petty theft and grand theft. (Pen. Code, § 486.)

2) Defines grand theft as when the money, labor, or real or personal property taken is of a value exceeding $950 dollars, except as specified. (Pen. Code, § 487.)

3) Provides that notwithstanding any provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed $950 shall be considered petty theft and shall be punished as a misdemeanor, except for cases in which the defendant has suffered a prior conviction for "super strike," enumerated in Penal Code section 667, subdivision (e)(2)(C)(iv) or which requires sex offender registration; in which case the offense is punished as a felony by imprisonment in the county jail pursuant to realignment. (Pen. Code, § 490.2, subd. (a).)

4) Provides that receiving stolen property where the value of the property is $950 or less is a misdemeanor, except for cases in which the defendant has suffered a prior conviction for "super strike," enumerated in Penal Code section 667, subdivision (e)(2)(C)(iv) or which requires sex offender registration; in which case the offense is punished as a felony by imprisonment in the county jail pursuant to realignment. . (Pen. Code, § 496, subd. (a).)

5) States that a felony is a crime that is punishable with death, imprisonment in the state prison, or in the county jail under the provisions of Penal Code section 1170, subdivision (h). All other crimes are misdemeanors, except those classified as infractions. (Pen. Code, § 17, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "I have heard straight from officers in my community that criminals are walking around with calculators so they do not steal more than $950 worth of goods or others who will steal guns from the same place one at a time instead of all at once so that if they get caught it is a misdemeanor and not a felony. These actions are a direct result of Prop 47. It is not an exaggeration that crime rates are increasing in California. According to a recent report by the Public Policy Institute of California (PPIC), California Cities dominate the top of the national list for crime rate increases in 2015. That includes Sacramento topping the national chart for violent crime rate increases, and San Francisco topping the list for property crime rate increases. It is no surprise to see an increase in crime when policies do not actually help people get treatment in addition to sending messages that the state of California is soft on crime -even on such actions as stealing a gun.

"In Fresno County, one drug court has shut down and another has seen participation rate cut

in half. Sacramento County has seen a 40% decrease. Part of the problem is that there is no longer the threat of a felony conviction to encourage individuals to seek help in a program in lieu of a higher penalty. AB 2369 lets voters rethink the unintended consequences of Prop 47 and allows them to decide whether they think repeat criminals, who violate laws affected by Prop 47 three times within a year or steal a gun, should receive an enhanced penalty. AB 2369 allows an individual's prior criminal actions to be considered when sentencing repeat criminals."

2) **Proposition 47**: On November 4, 2014, California voters approved Proposition 47, also known as the Safe Neighborhoods and Schools Act, which reduced penalties for certain offenders convicted of nonserious and nonviolent property and drug crimes. Proposition 47 also allows inmates serving sentences for crimes affected by the reduced penalties to apply to be resentenced.

   According to the California Secretary of State's web site, 59.6 percent of voters approved Proposition 47. (See <http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf> [as of Mar. 14, 2015].) The purpose of the measure was "to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K–12 schools, victim services, and mental health and drug treatment." (Ballot Pamp., Gen. Elec. (Nov. 4, 2014), Text of Proposed Laws, p. 70.) One of the ways the measure created savings was by requiring misdemeanor penalties instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession for personal use, unless the defendant has prior convictions for specified violent crimes. (*Ibid.*)

3) **Proposition 47 and Crime Rates**: Recent commentary by the Public Policy Institute of California notes, "Reports of increases in violent crime in some areas have raised concerns, and the significant drawdown in the jail and prison populations—by roughly 17,000 inmates so far—certainly carries the risk of increased crime. But it would be premature to blame Proposition 47 for the uptick…."

   "There are good reasons to be cautious about attributing these upticks to Proposition 47. Crime trends fluctuate frequently and widely and it is challenging to pinpoint specific causes. The first year of realignment provides a good example of this. After a long decline, both violent and property crime in California increased in 2012, the year after realignment was implemented, and many blamed the reform. However, as our careful analysis has shown, there is no evidence that realignment led to more violent crime, and the only uptick that can be attributed to the reform is auto theft. Another reason to be cautious is that other states have seen increases in crime this year—the New York Times recently reported that violent crime, as represented by murder rates, has gone up noticeably in a number of US cities. With all this in mind, at this time we urge against drawing any firm conclusions about Proposition 47's impact on crime." (http://www.ppic.org/main/blog_detail.asp?i=1888.)

4) **Repeat Offenders**: This bill provides that if a defendant commits any of the crimes, reduced to misdemeanors by Proposition 47 three times in a three-year span, then, on the third conviction, the defendant is eligible for felony prosecution.

   It should be noted that the bill does not require the prior convictions to have occurred at separate times. For example, if a defendant is convicted in one day of possession of cocaine and possession of ecstasy for personal use, under the provisions of this bill, this would count

as two prior convictions for purposes of limiting the application of Proposition 47.

Further, with respect to multiple convictions of drug possession offenses, if a person uses drugs due to an addiction, it should not come as a surprise that the individual is likely to relapse before breaking the addiction cycle. In so doing, the person may suffer multiple drug possession convictions. (See e.g., *In re Taylor* (2003) 105 Cal.App.4th 1394, 1397 ["Anticipating that drug abusers often initially falter in their recovery, Proposition 36 gives offenders several chances at probation before permitting a court to impose jail time."].) Under this bill, such a person may not be eligible for the benefits of Proposition 47.

As to repeat offenders of property crimes, this bill provides that a person charged with petty theft can be subjected to felony prosecution and sentencing if, within the past three years, that person had any combination of two or more convictions for petty theft, grand theft, auto theft, burglary, carjacking, robbery, or felony receiving stolen property.

Before Proposition 47, the sentence-enhancement statute commonly known as "petty theft with a prior" elevated a misdemeanor petty theft to a wobbler (an alternate felony or misdemeanor) if the person has previously committed designated theft or theft-related convictions, and served a custody term for those convictions. Proposition 47 eliminated the penalties formerly associated with the "petty theft with a prior" statute except for a narrow category of sex offenders, persons with qualifying "super strikes," and those persons convicted of theft from elders or dependent adults. Those persons are still eligible for felony punishment, including a state prison sentence. (Pen. Code, § 666.)

Moreover, if a person has been convicted of carjacking within the past three years, that person is likely still serving a prison sentence because carjacking is punishable by three, five, or nine years in state prison. (Pen. Code, § 215, subd. (a).) Similarly, first-degree robbery carries a three, six, or nine year prison term; while second degree robbery carries a two, three, or five year prison term. (Pen. Code, § 213.) And first-degree burglary is punishable by a state prison term of two, four, or six years. (Pen. Code, § 461, subd. (a).) So again, as to these crimes, there is a good probability that a person would be unable to commit another theft crime during the three-year window limitation of this bill.

With regards to auto theft under Vehicle Code section 10851, Proposition 47 did not change the language making the offense punishable as an alternate felony or misdemeanor. However, there is a split of authority on whether the crime was eligible for reduced punishment, and the Supreme Court is currently considering the issue. (See *People v. Page* review granted 1/27/2016 (S230793/E062760), formerly at 241 Cal.App.4th 714.) Nevertheless, it is clear that for repeat offenders of auto theft, those persons are already eligible for felony sentencing of two, three, or four years. (Pen. Code, § 666.5, subd. (a).)

In sum, while Proposition 47 did reduce certain theft offenses to misdemeanors, there are still significant penalties for more egregious property crimes.

5) **California Constitutional Limitations on Amending a Voter Initiative**: Because Proposition 47 was a voter initiative, the Legislature may not amend the statute without subsequent voter approval unless the initiative permits such amendment, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers. (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568; see also Cal. Const., art. II, § 10, subd.

(c).) The California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." (Cal. Const., art. II, § 10, subd. (c).) Therefore, unless the initiative expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative.

The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent. Courts have a duty to jealously guard the people's initiative power and, hence, to apply a liberal construction to this power wherever it is challenged in order that the right to resort to the initiative process is not improperly annulled by a legislative body. (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473.)

As to the Legislature's authority to amend the initiative, Proposition 47 states: "This act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a two-thirds vote of the members of each house of the Legislature and signed by the Governor so long as the amendments are consistent with and further the intent of this act. The Legislature may by majority vote amend, add, or repeal provisions to further reduce the penalties for any of the offenses addressed by this act." (<http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47>.)

This bill seeks to increase punishment for repeat offenders for the crimes which were reduced to misdemeanors by Proposition 47. As such, it is inconsistent with the purpose of Proposition 47. Therefore, pursuant to the above-referenced provisions of the California Constitution, only the voters may authorize the provisions.

This bill, if approved by the Legislature, calls for a special election to be held for the voters of California to approve its provisions.

6) **Argument in Support**: According to the *Peace Officers Research Association of California* (PORAC), "PORAC opposed Proposition 47 for many reasons, including the fact that a criminal can commit the same crime over and over again with no limits on the repeat offense and the crime always remains a misdemeanor. One of the most egregious aspects of the initiative was the fact that the criminal can repeatedly steal a firearm and regardless of the amount of times they are convicted, it is always deemed a misdemeanor. Studies have shown that a majority of firearms used to commit crimes are stolen. This bill can help deter firearm theft in California."

7) **Argument in Opposition**: According to *Californians for Safety and Justice*, "Proposition 47 maintained California state laws that provide law enforcement authority to arrest and book into custody individuals suspected of committing misdemeanor offenses. Law enforcement maintains the authority to remove individuals that commit these offenses from the community. Penal code section 836 states, '[a] peace officer may arrest a person in obedience to a warrant, or [when the] officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.'

"California law also authorizes detention for individuals in misdemeanor cases, including

Proposition 47 offenses, when officers have probable cause to believe a suspect has committed a crime and it is in the best interest of public safety to detain. Additionally, Proposition 47 maintains California law regarding judicial discretion at arraignment. There are also multiple avenues for pursuing targeted deterrence to address chronic offending; such as: authority to aggregate or 'bundle' multiple thefts and pursue felony charges; the power to bring felony charges for shoplifters who use 'force or fear' under Penal Code section 211; use of 'criminal conspiracy' statutes to prosecute organized retail theft – even misdemeanor theft – as a felony; and the identify theft statute, which makes any theft involving stolen identity, regardless of value, a felony.

"In addition to targeted deterrence strategies, criminal justice agencies can, and should, expand best practices in law enforcement diversion, supervised misdemeanor probation, expanded criteria for treatment programs to authorize participation for misdemeanants, and expanded use of collaborative court models, neighborhood problem solving, and a host of other strategies that focus law enforcement resources to protect public safety without wasting state prison beds."

8) **Related Legislation**:

a) AB 1869 (Melendez) calls for a special election to amend Proposition 47 and make the theft of a firearm grand theft in all cases and punishable by a state prison term. AB 1869 is pending hearing in the Assembly Committee on Elections and Redistricting.

b) AB 2854 (Cooper) is substantially similar to AB 1869 (Melendez), but calls for a special election to be held in June 2016. AB 2854 is pending referral.

9) **Prior Legislation**:

a) AB 150 (Melendez) requires an initiative statute be put before the voters to amend Proposition 47 to make the theft of a firearm, valued at $950 or less, a felony. AB 150 was held on the Assembly Appropriations Committee suspense file.

b) Proposition 47 of the November 2014 general election, the Safe Neighborhoods and Schools Act, reduced the penalties for certain drug and property crimes from felonies to misdemeanors.

REGISTERED SUPPORT / OPPOSITION:

Support

American Petroleum and Convenience Store Association
Association for Los Angeles Deputy Sheriffs
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California Narcotic Officers Association
California Police Chiefs Association
California Retailers Association
California Sportsman's Lobby
California State Sheriffs' Association

Crossroads of the West Gun Shows
Fresno Chamber of Commerce
Fresno County Sheriff-Coroner
Fresno Police and Neighborhood Watch Association
Kings County Sheriff's Office
Los Angeles Police Protective League
Los Angeles Professional Peace Officers Association
Madera Police Department
National Shooting Sports Foundation
Outdoor Sportsmen's Coalition of California
Peace Officers Research Association of California
Riverside Sheriffs Association
Safari Club International
Tulare County Sheriff's Office

Opposition

American Civil Liberties Union
American Friends Service Committee
Center on Juvenile and Criminal Justice
California Attorneys for Criminal Justice
Californians for Safety and Justice
Californians United for a Responsible Budget
Community Coalition
Drug Policy Alliance
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Justice Now
Legal Services for Prisoners with Children
National Council of La Raza
PICO California
William Lansdowne, Ret. Chief, San Diego Police Department

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Amendments Mock-up for 2015-2016 AB-2369 (Patterson (A))

*********Amendments are in BOLD*********

1) Delete Section 1 of the bill in its entirety:

~~Section 490.2 of the Penal Code is amended to read:~~

~~**490.2.** (a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a misdemeanor, with the following exceptions:~~

~~(1) A person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.~~

~~(2) When the items taken include a firearm, the person shall be punished pursuant to subdivision (h) of Section 1170.~~

~~(b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.~~

2) In current Section 2 of the bill, make the following change in subdivision (b)(1):

(b) (1) Shoplifting of an item with a value of ~~more than~~ nine hundred fifty dollars ($950) **or less**.

3) Delete current language of section 3 of the bill, and replace with the following.

~~Section 1 of this act amends the Safe Neighborhoods and Schools Act, Proposition 47, an initiative statute, and shall become effective only when submitted to and approved by the voters. The Secretary of State shall submit Section 1 of this act for approval by the voters at a statewide election in accordance with Section 9040 of the Elections Code.~~

SEC. 2. Section 1 of this act amends the Safe Neighborhoods and Schools Act, Proposition 47, an initiative statute, and shall become effective only when submitted to and approved by the voters at a statewide election.

(b) A special election is hereby called, to be held throughout the state on November 8, 2016, for approval by the voters of Section 1 of this act. The special election shall be consolidated with the statewide general election to be held on that date. The consolidated election shall be held and conducted in all respects as if there were only one election, and only one form of ballot shall be used.

(c) Notwithstanding the requirements of Sections 9040, 9043, 9044, 9061, 9082, and 9094 of the Elections Code, or any other law, the Secretary of State shall submit Section 1 of this act to the voters for their approval at the November 8, 2016, statewide general election.

SEC. 3. This act calls an election within the meaning of Article IV of the Constitution and shall go into immediate effect.

Date of Hearing: March 29, 2016
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2477 (Patterson) – As Introduced February 19, 2016

SUMMARY: Overturns case law holding that a court lacks jurisdiction to modify a restitution order after the defendant's probation expires, thereby extending jurisdiction for restitution indefinitely. Specifically, **this bill**:

1) States legislative intent to abrogate the holdings in *Hilton v. Superior Court* (2014) 239 Cal.App.4th 766, and *People v. Waters* (2015) 241 Cal.App.4th 822.

2) Provides that the court retains jurisdiction to impose or modify restitution regardless of the type of sentence imposed or suspended and notwithstanding any other law.

EXISTING LAW:

1) Establishes the right of crime victims to receive restitution directly from the persons convicted of the crimes for losses they suffer. (Cal. Const. art I, § 28, subd. (b).)

2) Requires victim restitution from adult criminal defendants who have been sentenced by the court in every case in which a victim has suffered an economic loss as a result of the defendant's conduct. (Pen. Code, § 1202.4, subd. (f).)

3) Defines probation as "the suspension of the imposition or execution of a sentence and the order of conditional release in the community under the supervision of a probation officer." (Pen. Code, § 1203, subd. (a).)

4) Gives the court discretion in felony cases to grant probation for up to five years, or no longer than the prison term that can be imposed when the prison term exceeds five years. (Pen. Code, § 1203.1, subd. (a).)

5) Gives the court discretion in misdemeanor cases to generally grant probation for up to three years, or no longer than the consecutive sentence imposed if more than three years. (Pen. Code, § 1203a.)

6) Authorizes the extension of probation for five years in certain misdemeanor cases, such as driving under the influence. (Veh. Code, § 23600, subd. (b)(1).)

7) Requires a court which grants probation to make the payment of the victim restitution order a condition of probation. (Pen. Code, § 1202.4, subd. (m).)

8) Authorizes the court to revoke, modify, extend, or terminate its order of probation. (Pen. Code, §§ 1203.2 & 1203.3.)

9) Authorizes the court to modify the dollar amount of restitution at any time during the term of probation. (Pen. Code, § 1203.3, subd. (b)(5).)

10) Prohibits the court from modifying the restitution obligations due to the defendant's good conduct. (Pen. Code, § 1203.3, subd. (b)(4).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2477 is a measure which will clarify that the courts retain jurisdiction over a case for purposes of restitution even after the probationary period expires. By doing this we will uphold the Constitutional right of crime victims to receive the restitution that they deserve.

   "In two recent state appellate court decisions, questions arose when it came to deciding whether or not the court had jurisdiction to impose restitution on a person who has committed a crime, after their probationary period has expired. This is problematic because the initial court hearing and restitution hearing are totally separate from one another. Often times restitution hearings can be delayed due to extraneous circumstances. Generally restitution is not granted at the initial hearing because the court still does not have the exact figure that must be paid because some costs may be ongoing or not yet determined, such as medical bills.

   "AB 2477 clarifies that the court will retain jurisdiction over a case for purposes of restitution. This bill will ensure that victims receive the just restitution that they are owed and that they are provided with the correct amount to compensate their losses."

2) **Constitutionally Protected Right to Victim Restitution**: The right of a victim to restitution from the person convicted of a crime from which the victim suffers a loss as result of the criminal activity became a constitutional right when adopted by vote of the people in June 1982 as part of Proposition 8. Proposition 8 added article I, section 28, subdivision (b), to the California Constitution, and provided:

   "It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

   "Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section."

   The Proposition was not self-executing, but rather directed the Legislature to adopt implementing legislation. (*People v. Vega-Hernández* (1986) 179 Cal.App.3d 1084.) In response, the Legislature enacted Penal Code sections 1202.4 and 1203.04 (repealed section

related to restitution as condition of probation). (*People v. Ortiz* (1997) 53 Cal.App.4th 791, 795, fn. 3.)

The constitutional provisions regarding restitution were amended by the voters again in 2008, when they approved Proposition 9, the Victims' Bill of Rights Act of 2008, also known as Marsy's Law. The amendments, among other things, make clear that a victim is entitled to restitution, expanded the definition of a victim to include a representative of a deceased victim, and gave that representative the ability to enforce a victim's right. (See *People v. Runyan* (2012) 54 Cal.4th 849, 858-859.)

3) **Restitution as a Condition of Probation**: When the court grants probation, payment of restitution must be made a condition of probation. (Pen. Code, 1202.4, subd. (m).)

The court has broader discretion to order restitution as a condition of probation than it does when a defendant is not granted probation. (*People v. Anderson* (2010) 50 Cal.4th 19, 26-27.) When ordering restitution as a condition of probation, the court is not restricted to directing payment to only those victims as defined in the restitution statute. Additionally, the court can order restitution as a condition of probation even when the losses are not necessarily caused by the conduct underlying the defendant's conviction. Rather than having a causal connection, the restitution condition must only be reasonably related to either the defendant's crime or to the goal of deterring future criminality. (*Ibid*; see also *People v Carbajal* (1995) 10 Cal4th. 1114, 1121–1124.)

If part of a restitution order has not been paid after a defendant is no longer on probation, it remains enforceable by the victim as though it were a civil judgment. (Pen. Code, 1202.4, subd. (m).)

4) **Recent Case Law**: Two recent appellate court cases have held that a trial court acts in excess of its jurisdiction when it orders or modifies restitution after the expiration of a defendant's probationary period.[1]

In *Hilton v. Superior Court* (2014) 239 Cal.App.4th 766, the Court of Appeal held that once probation expires, the judge cannot modify a restitution order. In *Hilton*, the defendant pled to driving under the influence and the court placed him on probation for three years. At a subsequent restitution hearing, the court ordered the defendant to pay $3,000 restitution to the victim, which he did. (*Id.* at pp. 769-770.) The victim then sued the defendant civilly and won $3.5 million. Probation then expired on the criminal case. One year and seven months after probation exprired, the victim went back to court and requested that the court could order $886,000 more in restitution, to pay for the costs of the civil suit as well as additional lost wages. The defendant objected based on lack of jurisdiction. (*Id.* at 770.) The Court of Appeal reversed the order, holding that once probation expires, the court loses jurisdiction to modify a restitution order and that any extension of probation was an act in excess of jurisdiction and void. (*Id.* at p. 772.) The court noted that termination of probation

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[1] These cases are not contrary to the recent California Supreme Court case of *People v. Ford* (2015) 61 Cal.4th 282, which held that agreeing to a hearing on restitution outside the probationary period estops the defense from later challenging lack of jurisdiction.

occurs by operation of law at the end of the probationary period. (*Id.* at p. 773.) The court also held that the language of Penal Code section 1203.3, reflects legislative intent, consistent with pre-exisiting law on probation, that the trial court lacks jurisdiction to impose restitution once probation expires. (*Id.* at pp. 775-776.)

People v. Waters (2015) 241 Cal.App.4th 822, agreed with the holding in *Hilton*. In this case, the court sought to order restitution two years after the probationary period expired, even though the victim impact statement seeking $20,000 was filed before the entry of the plea. (*Id.* at p. 825.) The court noted that Penal Code section 1202.4, subdivision (f) requires the trial court to order victim restitution unless the trial court finds compelling and extraordinary reasons for not doing so. Regarding jurisdiction, a trial court's power to modify a sentence usually expires 120 days after judgment. (See Pen. Code, § 1170, subd. (d).) (*Id.* at p. 827.) But there is an exception where victim restitution cannot be ascertained at the time of sentencing and the trial court retains jurisdiction to order restitution. (Pen. Code, § 1202.46.) However, section 1202.46 must be harmonized with the preexisting statutory scheme concerning probation, which limits a trial court's jurisdiction to modify probation to the term of probation (Pen. Code, § 1203.3, subds. (a), (b)(4).) (Id. at p. 830-831.) Therefore, the court concluded that the trial court lacked jurisdiction to order restitution after the expiration of the defendant's probationary period. (*Id.* at p. 831.)[2]

This bill seeks to overturn these cases.

5) **Argument in Support**: According to the *California District Attorneys Association*, the sponsor of this bill, "Current law (Penal Code 1202.46) provides that if a crime victim's economic losses cannot be determined at the time of sentencing, the court retains jurisdiction over a defendant for purposes of imposing or modifying restitution until the losses can be determined. Recently, in Hilton v. Superior Court (2014) 224 Cal.App.4th 47, the Fourth District Court of Appeal held that the court loses jurisdiction to modify or impose a restitution amount once probation expires. Common practice, prior to the Hilton decision, was that the court retained jurisdiction for the limited purpose of modifying or imposing a restitution order.

"While the law provides elsewhere (PC 1214(b) & (c); PC 1202.4(m)) that restitution orders survive the expiration of probation, parole, mandatory supervision, and post release community supervision, the holding in Hilton precludes a court from ordering or correcting the restitution amount.

"This is contrary to the California Constitution, which requires a restitution order in every case, regardless of sentence or disposition (Article I Section 28 subdivision (b)(13)). The Victims' Bill of Rights (Proposition 8 in June 1982) and Marsy's Law (Proposition 9 in November 2008) support a court's continuing jurisdiction to deal with victim restitution issues, and clearly provide that every case where a victim has suffered a loss must have a restitution order.

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[2] It is unclear why in *People v. Waters*, *supra*, 241 Cal.App.4th 822, the People did not file an appeal claiming that a judgment lacking a victim restitution order was an unauthorized sentence. (See e.g. *People v. Rowland* (1997) 51 Cal.App.4th 1745 [when the court fails to issue a restitution award altogether, the sentence is invalid].)

"In the vast majority of cases, the victim restitution amount is finite, and the victim will not have to come back to court to get the amount increased because of ongoing expenses, such as additional medical bills or counseling fees. However, there are at least three scenarios in which the court needs to be able to deal with restitution issues post-supervision: (1) when it is discovered that victim restitution was overlooked; (2) when it is discovered that the original restitution amount was incorrect and needs to be reduced, increased, or eliminated; or (3) when victim restitution was contemplated by the parties, but the period of supervision expired before it could be ordered.

"The bottom line is that the law needs to be flexible enough to deal with victim restitution in all cases. We need to be able to set the victim restitution amount in the first place, whenever it becomes known, and we need to be able to correct the amount of victim restitution when it is discovered to be incorrect."

6) **Argument in Opposition**: According to the *California Attorneys for Criminal Justice*, "The bill would infinitely expand a defendant's liability for restitution long after he or she completes her probationary term.

"Currently, the precedents hold that the trial court's jurisdiction ends upon the termination of a defendant's probationary term. This encourages a claimant to use due diligence in presenting a claim for restitution. It also provides an incentive for a defendant to satisfy the restitution order prior to the expiration of probation in order to prevent the probation term from being extended to satisfy the debt. It provides further incentive to a defendant to pay restitution early in his probationary term in support of a request for early termination of that term.

"The proposed legislation would not only be contrary to current case law; it would be contrary to the above-mentioned goals and incentives. By expressly providing that the trial court would have jurisdiction over a defendant for purposes of imposing or modifying restitution "at any time," the bill would exceed even the boundaries of civil liability statutes of limitation in many cases (particularly those involving personal injury). …

"Defendants could be forced at attempting to defend against claims made decades after the successful completion of probation, and as stated in *Waters* at page 832, a defendant's estate could even be subjected to liability. The court in *Waters* goes on to state, '[w]hile we are sensitive to concerns about making crime victims whole, there must be some discernible limit to a trial court's power over a defendant after he or she completes a sentence.' (*Id.*)"

7) **Related Legislation**: AB 2295 (Baker) eliminates court discretion to order less than full restitution when there are compelling and extraordinary reasons not to do so. AB 2295 is pending hearing in this committee.

8) **Prior Legislation**: AB 2645 (Dababneh), Chapter 111, Statutes of 2014, requires a court transferring a probation or mandatory supervision case to another county to determine the amount of victim restitution before the transfer is made.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Sponsor)
California Police Chiefs Association
California Probation, Parole, and Correctional Association
California State Sheriffs' Association
Crime Victims United of California

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice
California Public Defenders Association
Legal Services for Prisoners with Children

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2505 (Quirk) – As Introduced February 19, 2016

SUMMARY: Prohibits the use of carbon dioxide to euthanize an animal.

EXISTING LAW:

1) Prohibits the killing of any animal by using any of the following methods:

   a) Carbon monoxide gas. (Pen. Code, § 597u, subd. (a)(1).)

   b) Intracardiac injection of a euthanasia agent on a conscious animal, unless the animal is heavily sedated or anesthetized in a humane manner, or comatose, or unless, in light of all the relevant circumstances, the procedure is justifiable. (Pen. Code, § 597u, subd. (a)(2).)

2) With respect to the killing of any dog or cat, no person, peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall use any of the methods specified in subdivision (a) or any of the following methods:

   a) High-altitude decompression chamber; and (Pen. Code, § 597u, subd. (b)(1).)

   b) Nitrogen gas. (Pen. Code, § 597u, subd. (b)(2).)

3) States that no person, peace officer, officer of a humane society or officer of a pound or animal regulation department of a public agency shall kill any dog or cat by the use of any high-altitude decompression chamber or nitrogen gas. (Penal Code Section 597w.)

4) Provides that it is unlawful for any person to sell, attempt to sell, load or cause to be loaded, transport or attempt to transport any live horse, mule, burro, or pony that is disabled if the animal is intended to be sold, loaded, or transported for commercial slaughter out of California. (Penal Code Section 597x(a).)

5) Defines "disabled animal" as including, but not limited to, any animal that has broken limbs, is unable to stand and balance itself without assistance, cannot walk, or is severely injured. (Penal Code Section 597x(b).)

6) States that a violation of the prohibitions on methods of killing is a misdemeanor. (Penal Code Section 597y.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The use of carbon dioxide (CO_2) to euthanize dogs and cats is cost prohibitive, inhumane, dangerous, and unnecessary. However, due to a loophole in existing law, it is still legal to continue this practice. AB 2505 will close the loophole in current law and prohibit the use of CO_2 when euthanizing dogs and cats in California.

   "In a CO_2 chamber it can take minutes for dogs and cats to lose consciousness, and sometimes as long as twenty-five minutes for them to expire. Furthermore, some dogs and cats are resistant to CO_2, particularly the vulnerable ones like the sick and elderly. In these cases it takes longer to kill the animal using CO_2 and sometimes death is not even achieved. Exposure to CO_2 is known to cause animals pain and make them to feel like they are suffocating. Sometimes dogs and cats experience organ failure before losing consciousness. Furthermore, CO_2 is hazardous to animal personnel due to the risk of narcosis and complications from faulty equipment.

   "No state agency is tasked with inspecting gas chambers. This safety measure was eliminated in 1998 when the state assumed this practice was banned. As such any shelter in operation of one could be exposing staff and other adoptable animals to hazardous chemicals.

   "The widely accepted humane standard for euthanasia is a method called "euthanasia by injection." This method typically causes dogs and cats to lose consciousness within three to five seconds and die a pain-free death."

2) **Euthanasia by Administration of Carbon Dioxide (CO2)**: CO2 euthanasia occurs by administration of the gas in a sealed container. The gas produces unconsciousness and then death. A pressurized cylinder of CO2 is now viewed by a number of international animal research oversight authorities as the only acceptable method. CO2 may be administered in a home cage or in a specialized compartment and may be used to kill individuals or small groups of animals.

   Discussions of CO2 euthanasia with various people working in laboratory animal medicine and care (e.g. veterinarians, vivarium directors, technicians) reveal that there are conflicting CO2 practices and recommendations within the animal research community. For example, some institutions require that the euthanasia chamber be prefilled with CO2, while others prohibit the use of prefilled chambers because they appear to cause animal distress. Similar discrepancies in practice have also been noted in regards to concentration, flow rate and presence of oxygen. (Laboratory Animals, Conlee et al. (2005), p. 139.)

3) **American Veterinary Medical Association (AVMA) Guidelines for Euthanasia:** The AVMA published their most recent guidelines regarding animal euthanasia in 2013. The AVMA laid out strict guidelines for the use of CO2, but did not prohibit its use for euthanasia altogether. According to the AVMA, "Unfortunately, there are still shelters and animal control operations that do not have access to controlled substances and/or the personnel authorized by the Drug Enforcement Administration (DEA) to administer them. This limits these facilities' options for euthanizing animals." (http://atwork.avma.org/2013/02/26/euthanasia-guidelines-the-gas-chamber-debate/)

The AVMA Guidelines and Restrictions with respect to use of CO2 for animal euthanasia are as follows and use of CO2 is only considered acceptable if all the guidelines are met:

a) Personnel must be instructed thoroughly in the gas's use and must understand its hazards and limitations;

b) The gas source and chamber must be located in a well-ventilated environment, preferably outdoors;

c) The gas must be supplied in a precisely regulated and purified form without contaminants or adulterants, typically from a commercially supplied cylinder or tank;

d) The gas flow rate must allow operators to achieve known and appropriate gas concentrations within the recommended time;

e) The chamber must be of the highest-quality construction and should allow for separation of individual animals. If animals need to be combined, they should be of the same species, and, if needed, restrained or separated so that they will not hurt themselves or others. Chambers should not be overloaded and need to be kept clean to minimize odors that might distress animals that are subsequently euthanized;

f) The chamber must be well lighted and must allow personnel to directly observe the animals;

g) If the chamber is inside a room, monitors must be placed in the room to warn personnel of hazardous concentrations of gas; and

h) It is essential that the gas and the chamber be used in compliance with state and federal occupational health and safety regulations.

In the 2013 Guidelines, euthanasia by intravenous injection of an approved euthanasia agent remains the preferred method for euthanasia of dogs, cats, and other small companion animals. Gas chambers are not recommended for routine euthanasia of cats and dogs in shelters and animal control operations.

4) **Argument in Support**: According to The Humane Society of the United States, "It goes without saying that the goal of every reputable animal shelter should be to find alternatives to euthanasia whenever possible. But when shelters find themselves in the position of having to euthanize an animal, it is incumbent upon them to ensure that the death is as humane as possible. Nearly twenty years ago, California recognized that death by carbon monoxide gas is inhumane, and outlawed that practice for dogs and cats. Unfortunately, that ban did not also prohibit the use of carbon dioxide gas, creating a loophole. AB 2505 is necessary to close that loophole and ensure no one in California uses carbon dioxide to kill dogs and cats.

"Recent evidence suggests that carbon dioxide causes even more pain and distress than carbon monoxide; humans describe the effects of carbon dioxide exposure as excruciating. In fact, carbon dioxide exposure is so painful and distressing that starving laboratory animals will actually forgo food when it is offered in a chamber containing the gas. As far back as 2006, at the Newcastle Consensus Meeting on Carbon Dioxide Euthanasia of Laboratory

Animals, the scientific community was questioning the ethics of using CO_2 to kill animals[2], and at the 2014 AVMA Humane Endings Symposium researchers challenged the use of CO_2 even at concentrations approved as conditionally acceptable in the AVMA's 2013 Guidelines for the Euthanasia of Animals: 2013 Edition.

"Carbon dioxide is almost certain to cause pain and distress to every dog and cat, regardless of concentration level or method of introduction. As such, it is one of the most inhumane methods of euthanasia being practiced today."

5) **Prior Legislation**:

a) AB 1426 (Liu), Chapter 652, Statutes of 2006, prohibited the killing any animal by means of an intracardiac injection of a euthanasia agent on a conscious animal, unless the animal is heavily sedated or anesthetized in a humane manner, or comatose, or unless, in light of all the relevant circumstances, the procedure is justifiable.

b) SB 1659 (Kopp), Chapter 751, Statutes of 1998, prohibited the use of carbon monoxide to kill any animal.

REGISTERED SUPPORT / OPPOSITION:

Support

ASPCA
Best Friends Animal Society
Humane Society of the United States
Humane Society Veterinary Medical Association
LIUNA Locals 777& 792
San Diego Humane Society
San Francisco SPCA
Stockton Animal Shelter

Opposition

None

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2508 (Mathis) – As Amended March 28, 2016

SUMMARY: Provides that a handgun model removed from the roster of not unsafe handguns for any reason other than failing handgun safety testing, including, but not limited to, a failure to pay the annual fee, may be reinstated on the roster, as specified. Specifically, **this bill**:

1) Provides that a handgun model removed from the roster of not unsafe handguns for any reason other than failing handgun safety testing, including, but not limited to, a failure to pay the annual fee, may be reinstated on the roster if all of the following conditions are met:

   a) The manufacturer petitions the Attorney General (AG) for reinstatement of the handgun model;

   b) The reinstatement testing of the handguns shall be in accordance with specified retesting procedures; and,

   c) Requires the handgun manufacturer to provide the AG with the complete testing history for the handgun model.

2) States that a handgun model reinstated pursuant to the above provisions shall only be required to meet the handgun safety definitional requirements in place at the time the handgun model was originally submitted for testing.

3) Provides that if the handgun model successfully passes testing for reinstatement, as specified, the AG shall reinstate the handgun model on the roster of not unsafe handguns;

4) States that a firearm shall be deemed to be not unsafe if another firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm in dimension, barrel length, finish, coating, sights, magazine well opening, machining, contouring, or any other non-substantive mechanical or cosmetic feature, but is otherwise internally functionally identical to the listed firearm.

5) Provides that a firearm shall be deemed to meet the safety standards required in order to be listed on the roster of not unsafe handguns, if a manufacturer alters a listed firearm with a change or changes, including, but not limited to, function, mechanical components, or material, if the changes, are in the opinion of the manufacture, necessary to improve the safety or operation of the firearm. Any change does not exempt the firearm from drop safety testing or payment of the annual fee to the Department of Justice (DOJ) for the cost of maintaining the roster.

6) Requires a manufacturer to make a statement under oath that each unlisted firearm for which listing is sought meet the above requirements related to similarly tested firearms, or changes related to the safety and operation of the firearm.

EXISTING LAW:

1) Requires commencing January 1, 2001, that any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. (Pen. Code, § 32000, subd. (a).)

   a) Specifies that this section shall not apply to any of the following:

      i) The manufacture in California, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice (DOJ) to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited, inclusive, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this.

      ii) The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents of entities determining whether the weapon is prohibited by this section.

      iii) Firearms listed as curios or relics, as defined in federal law.

      iv) The sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person. (Pen. Code, § 32000, subd. (b).)

2) Specifies that violations of the unsafe handgun provisions are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. (Pen. Code, § 32000, subd. (c).)

3) Defines "unsafe handgun" as any pistol, revolver, or other firearm capable of being concealed upon the person, as specified, which lacks various safety mechanisms, as specified. (Pen. Code, § 31910.)

4) Requires any concealable firearm manufactured in California, imported for sale, kept for sale, or offered for sale to be tested within a reasonable period of time by an independent laboratory, certified by the state Department of Justice (DOJ), to determine whether it meets

required safety standards, as specified. (Pen. Code, § 32010, subd. (a).)

5) Requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state, as specified. The roster shall list, for each firearm, the manufacturer, model number, and model name. (Pen. Code, § 32015, subd. (a).)

6) Provides that DOJ may charge every person in California who is licensed as a manufacturer of firearms, as specified, and any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in California, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster of firearms determined not be unsafe, and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs, as specified. (Pen. Code § 32015, subd. (b)(1).)

7) Provides that the Attorney General (AG) may annually test up to 5 percent of the handgun models listed on the roster that have been found to be not unsafe. (Pen. Code, § 30020, subd. (a).)

8) States that a handgun removed from the roster for failing the above retesting may be reinstated to the roster if all of the following are met:

   a) The manufacturer petitions the AG for reinstatement of the handgun model;

   b) The manufacturer pays the DOJ for all the costs related to the reinstatement testing of the handgun model, including purchase of the handgun, prior to reinstatement testing;

   c) The reinstatement testing of the handguns shall be in accordance with specified retesting procedures;

   d) The three handguns samples shall only be tested once. If the sample fails it may not be retested;

   e) If the handgun model successfully passes testing for reinstatement, as specified, the AG shall reinstate the handgun model on the roster of not unsafe handguns;

   f) Requires the handgun manufacturer to provide the AG with the complete testing history for the handgun model; and,

   g) Allows the AG, at any time, to further retest any handgun model that has been reinstated to the roster. (Pen. Code, § 32025, subds. (a)-(g).)

9) Provides that a firearm may be deemed to be listed on the roster of not unsafe handguns if a firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm in one or more of the following features:

a) Finish, including, but not limited to bluing, chrome plating or engraving;

b) The material from which the grips are made;

c) The shape or texture of the grips, so long as the difference in grip shape or texture that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.

d) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm. (Pen Code, § 32030, subd. (a).)

10) States that any manufacturer seeking to have a firearm listed as being similar to a tested shall provide the DOJ with the following:

a) The model designation of the listed firearm;

b) The model designation of each firearm that the manufacturer seeks to have listed on the roster of not unsafe handguns;

c) Requires a manufacturer to make a statement under oath that each unlisted firearm for which listing is sought differs from the listed firearm in only one or more specified ways, and is otherwise identical to the listed firearm. (Pen Code, § 32030, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2508 would give law-abiding residents the opportunity to acquire previously safety-tested and Department of Justice (DOJ) approved, quality handguns that were removed from California's Handgun Roster for reasons not related to whether or not such handguns were "unsafe". Additionally, it would allow manufacturers to make minor changes, such as a safety upgrades to firearms that are already on the roster."

2) **Not Unsafe Handgun Law**: SB 15 (Polanco), Chapter 248, Statutes of 1999, made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun as, as defined, with specific exceptions. SB 15 defined an "unsafe handgun" as a handgun that does not have requisite safety features, does not meet specified firing requirements or does meet specified drop safety requirements.

   SB 489 (Scott), Chapter 500, Statutes of 2003, added to the handgun safety requirements, effective January 1, 2007, all center-fire semiautomatic pistols not already found to be "safe" to have both a chamber load indicator and a magazine disconnect mechanism if the pistol has a detachable magazine in order to be added to the roster of approved "safe" firearms. All firearms that were not on the unsafe handgun roster prior to the effective date of this stature were grandfathered in.

AB 1471 (Feuer), Chapter 572, Statutes of 2007, added "microstamping" as a requirement for a firearm to be placed on the not unsafe handgun roster beginning January 1, 2010 provided that the DOJ certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by patent restrictions. The DOJ issued the required certification on May 17, 2013. As with chamber load indicators and magazine disconnect mechanisms, the "microstamping" requirement did not apply to firearms that were already on the roster.

This legislation makes two changes to the not unsafe handgun law. First, it would allow a firearm that was on the roster but was removed for a reason other than failing safety testing, for example, failure to pay the annual fee, to be added back the roster if it meets specified requirements. Secondly, a handgun model seeking reinstatement would only be required to meet the standards that were in place when the model was originally placed on the roster. For example, a handgun that was placed on the roster in 2002 and was removed in 2013 for a failure to pay the annual fee, could be added back to the roster without a chamber load indicator, magazine disconnect, and microstamping.

3) **Argument in Support**: According to the *Firearms Policy Coalition,* "As you know, the number of semi-automatic firearms available for sale in California is diminishing due to changes to the statutes governing the handgun roster put in place since its inception in 2000. Originally a consumer product safety testing system, over the years it has become, in practice, a total ban on new semi-automatic firearms. New models may not be submitted for testing and inclusion on the approved roster unless they have "microstamping" technology. Unfortunately, workable microstamping technology does not exist in the industry, nor does it appear that it will in the foreseeable future.

"In addition, the current statute can be interpreted to prohibit the upgrading or modification of already approved handguns- if a part or vendor in the supply chain needs to be changed or upgraded for quality or safety, the manufacturer cannot re-apply under the same testing conditions as it must then be treated as an entirely new model and tested with "microstamping", which as we stated previously- does not exist.

"Your measure, Assembly Bill 2508, clarifies that minor changes that do not change the internal functionality of the firearm will not prevent that firearm from being safety-tested in a state approved laboratory under the same requirements it was successfully submitted under originally.

"This is a win for public safety, the consumer and the manufacturer. It represents the spirit of the original enacting legislation, but clarifies those issues that prevent the consumer from having access to high quality products."

4) **Argument in Opposition**: According to the *California Chapters of the Brady Campaign to Prevent Gun Violence*, "Pursuant to the Unsafe Handgun Act (SB 15), which was enacted in 1999, California law established various requirements governing unsafe handguns. For example, existing law requires the Department of Justice to maintain a roster listing the handguns that have been tested have been determined not to be unsafe. Further, existing law allows a handgun model that has been included in the roster to be retested and allows the handgun model to be removed from the roster if it fails retesting.

"If a handgun model is removed from the roster for failing retesting, existing law allows reinstatement following a petition to the Attorney General for reinstatement and successful retesting. AB 2508, however, would allow a handgun model removed from the roster for any other reason to be reinstated to the roster upon a petition to the Attorney General. The bill further provides that a handgun model that is reinstated to the roster in this way must only meet the requirements for listing as of the date the handgun model was originally submitted for testing.

"Another provision of AB 2508 would revise the features in which the unlisted firearm may differ from the listed firearm and still be reinstated on the roster, provided that the unlisted firearm is otherwise internally functionally identical to the listed firearm. Finally, the bill would require a firearm to be deemed to satisfy the requirements of being listed on the roster if a manufacturer alters a listed firearm, and the changes are, in the opinion of the manufacturer, necessary to improve the safety or operation of the firearm.

"These provisions are objectionable because they are both too broad (an unlisted firearm can differ from the listed firearm in dimension, barrel length, finish, coating, grips, sights, magazine well opening, machining, contouring, or any other non-substantive mechanical or cosmetic feature) and subjective (in the opinion of the manufacturer is necessary to improve the safety or operation of the firearm). The reasonable solution is to submit the unlisted guns for testing as new models, which they essentially are.

"The California Brady Campaign strongly opposes AB 2508. If a firearm has been removed from the roster because of voluntary action by a firearm manufacturer, then the manufacturer should have to live by its decision and/or actions. A manufacturer may, of course, resubmit the firearm for retesting but it should be required to comply with all the requirements in place at the time of resubmittal. In practical terms, this means that the firearm should possess an approved chamber load indicator and be equipped with micro-stamping technology. It is clear that the underlying purpose of this bill is to circumvent these newer additions to the law."

5) **Prior Legislation**: SB 916 (Correa), of the 2014-2015 Legislative Session, was substantially similar to this bill in that it allowed a firearm to be reinstated to the DOJ roster of "not unsafe handguns" if the handgun was removed from the roster for any reason other than failing handgun safety testing. SB 916 failed passage in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Federal Firearms Licensees
Crossroads of the West Gun Shows
Firearms Policy Coalition
National Rifle Association of America
Outdoor Sportsmen's Coalition of California
Safari Club International

Opposition

California Chapters of the Brady Campaign to Prevent Gun Violence
Law Center to Prevent gun Violence

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: March 29, 2016
Consultant: Matt Dean

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2524 (Irwin) – As Amended March 14, 2016

SUMMARY: Requires the Department of Justice (DOJ) to issue its mandatory criminal justice statistics reports quarterly through the OpenJustice Web Portal. Specifically, **this bill**:

1) Requires DOJ to post, on the OpenJustice Web Portal, quarterly criminal justice statistics relating to officer involved incidents with the demographics of the individuals involved and a description of the incident; case clearance rates; juvenile delinquency; the disposition of civilian complaints; the demographics of victims and individuals charged in homicides; the incidents and demographics targeted by hate crimes; the incidents and demographics of "stop and frisk" detentions; the incidents and demographics of potential profiling incidents; administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies; and other data leading to the apprehension, prosecution, and treatment of the criminals and delinquents.

2) Eliminates the use of paper cards or forms by law enforcement agencies to submit required statistical data to DOJ.

3) Eliminates DOJ's requirement to annually present a report on criminal justice statistics to the Governor and the Legislature.

4) Requires DOJ to add prosecutorial administrative actions to its criminal justice statistics collection and summaries.

EXISTING LAW:

1) Requires DOJ to annually interpret and present crime statistics, required to be reported by law enforcement and other agencies and information, to the Governor. (Pen. Code, §§ 13010, subd. (g), 13020.)

2) Requires DOJ to interpret and present statistics and information to the Legislature and to those in charge or concerned with of the apprehension, prosecution, and treatment of the criminals and delinquents. (Pen. Code, § 13012(b).)

3) Allows the Attorney General to issue special reports on crime statistics. (Pen. Code, § 13010, subd. (g).)

4) Requires the Racial and Identity Profiling Board (RIPA) to annually analyze and report to the Attorney General statistics collected from law enforcement agencies regarding citizen complaints. (Pen. Code, § 13012, subds.(a) and (c).)

5) Requires the Attorney General to make available a sufficient number of copies of both the required annual report on crime statistics and any special reports. (Pen. Code, § 13010, subd. (g).)

6) Requires DOJ to prepare and distribute to any person or agency required to submit crime statistics the cards, forms, or electronic means used in reporting data to the department. The cards, forms, or electronic means may, in addition to other items, include items of information needed by federal bureaus or departments engaged in the development of national and uniform criminal statistics. (Pen. Code, § 13010, subd. (b).)

7) Requires DOJ to periodically review the requirements of units of government using criminal justice statistics, and to make recommendations for changes it deems necessary in the design of criminal justice statistics systems, including new techniques of collection and processing made possible by automation. (Pen. Code, § 13010, subd. (h).)

8) Requires DOJ, beginning January 1, 2017, to issue an annual summary of incidents reported by law enforcement including:

   a) The shooting of a civilian by a peace officer;

   b) The shooting of a peace officer by a civilian;

   c) The use of force by a peace officer against a civilian that results in serious bodily injury or death; and

   d) The use of force by a civilian against a peace officer that results in serious bodily injury or death; (Gov. Code, § 12525.2, subds. (a) and (c).)

9) Requires DOJ's annual summary of shootings of and by peace officers, and of use of force by or against peace officers, to include the number and demographics of those involved, if the civilian was armed, the type of force used, and a description of the incident, as provided. (Gov. Code, § 12525.2, subds. (a), (b) and (c).)

10) Requires DOJ to collect data pertaining to the juvenile justice system for criminal history and statistical purposes, including all of the following:

   a) The amount and the types of offenses known to the public authorities;

   b) The personal and social characteristics of criminals and delinquents;

   c) The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents;

   d) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies including those in the juvenile justice system, in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court; and

e) The total number of each of the following, disaggregated by individual law enforcement agency, including whether the disposition of the complaints was sustained, not sustained, exonerated or unfounded, as defined:

i) Citizen complaints received by law enforcement agencies;

ii) Citizen complaints alleging criminal conduct of either a felony or misdemeanor; and

iii) Citizen complaints alleging racial or identity profiling, as defined. These statistics shall be disaggregated by the specific type of racial or identity profiling alleged, such as based on a consideration of race, color, ethnicity, national origin, religion, gender identity or expression, sexual orientation, or mental or physical disability. (Pen. Code, §§ 832.5, 13012(a), 13519.4.)

11) Requires the annual report published by DOJ to include information concerning arrests for identity theft. (Pen. Code, §§ 530.5, 13010, 13012.6.)

12) Requires DOJ to maintain a data set, updated annually, that contains the number of crimes reported, number of clearances and clearance rates in California as reported by individual law enforcement agencies for required-to-be-reported crimes. The data set shall be made available through a prominently displayed hypertext link on the Department's Internet Web site or through the Department's OpenJustice data portal. (Pen. Code, §§ 13012, 13013.)

13) Requires DOJ to perform the following duties concerning the investigation and prosecution of homicide cases:

a) Collect information on all persons who are the victims of, and all persons who are charged with, homicide;

b) Adopt and distribute as a written form or by electronic means to all state and governmental entities that are responsible for the investigation and prosecution of homicide cases forms that will include information to be provided to the department; and

c) Compile, collate, index, and maintain an electronic file of the information regarding victims of and those charged with homicide into a report available to the public. (Pen. Code, §13014.)

14) Requires local law enforcement agencies to report to DOJ, in a manner prescribed by the Attorney General, any information that may be required relative to hate crimes so that the Department can report, on or before July 1 of each year, the Department's analysis to the Legislature. (Pen. Code, §§ 422.55, 13023.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2524 will modernize California's collection and publication of criminal justice data. The OpenJustice Data Act builds upon

Attorney General Kamala Harris's open data initiative to improve and empower the public's access to local and statewide crime statistics.

"AB 2524 will reinvent *Crime in California* and other annual reports published by the California DOJ as digital data sets within the Attorney General's OpenJustice Web portal. These reports provide statistical summaries including numbers of arrests, complaints against peace officers, hate crime offenses, and law enforcement officers killed or assaulted; however, the static nature of these print publications means that data often lacks context. The OpenJustice Web portal will alchemize this information with interactive, accessible visualization tools, while making raw data available for public interest researchers.

"Additionally, AB 2524 will bring the state's data collection into the 21st century by requiring local law enforcement agencies to submit all currently required statistical reports digitally. Despite the fact that electronic reporting provides for more accurate and efficient data submission, as many as 60% of local agencies still submit required data to the California DOJ on paper. The OpenJustice Data Act will direct all agencies to transition into digital reporting, which will allow for more frequent updates to statistics contained within the Web portal.

"DOJ first launched the OpenJustice initiative in 2015 as a mechanism for improving community trust in law enforcement, enhancing government accountability, and informing public policy. In early 2016 the Attorney General announced the release of OpenJustice 1.1, which enriched the Web portal's initial data sets with city, county, and state level context including population and demographic information, unemployment rates, poverty rates, and educational attainment levels. In addition to providing greater transparency, this information enables policymakers to craft informed, data-driven public policy."

2) **Summary**: Various provisions of the Government and Penal Codes require DOJ to collect, analyze, and report on criminal justice statistics. Each individual law enforcement agency must report criminal justice statistics to DOJ so DOJ can both aggregate the data to present a statewide overview and to present data on each individual law enforcement agency. Currently, the agency's statistics may be submitted by paper forms and cards. The statistics which agencies are required to report include: officer involved incidents with the demographics of the individuals involved and a description of the incident, case clearance rates, juvenile delinquency, the disposition of civilian complaints, the demographics of victims and individuals charged in homicides, the incidents and demographics targeted by hate crimes, the incidents and demographics of "stop and frisk" detentions, the incidents and demographics of potential profiling incidents, and other data leading to the apprehension, prosecution, and treatment of the criminals and delinquents.

   Separate provisions require DOJ to prepare a summary of these criminal justice statistics every year in reports to the Governor and the Legislature, and otherwise make the data and reports available to the public. This bill requires law enforcement agencies to submit their statistics by electronic means only, and require DOJ to post the raw statistics and their summaries quarterly –rather than annually- on the OpenJustice Web Portal, which is easily accessible by the Governor, the Legislature and the public.

3) **Argument in Support**: According to *Attorney General Kamala Harris*, "California has a long history of supporting criminal justice data. When DOJ was first created in 1944 and

given control over the state's criminal identification services, Attorney General Robert Kenny created a Bureau of Criminal Statistics to leverage this information to provide statistical insight into public safety issues. In 1955, legislation was enacted requiring the bureau to provide 'a printed annual report containing the criminal statistics of the preceding calendar year,' as well as additional reports on 'special aspects of criminal statistics.' This publication has become known as *Crime in California*, and has served as an important resource for researchers and lawmakers.

"The state has changed dramatically over the past six decades. The advent of new analytic technologies has only further illuminated the value of using reliable data to guide public policy. Meanwhile, the internet has empowered Californians with greater access to information than at any other point in history, enabling everyday residents to learn about the world they live in. However, statutes governing the state's publication of crime data remain substantially the same. Data pertaining to the work of public safety in communities remains largely inaccessible to most residents, contained in pages of numerical tables published in paper reports and reproduced through static downloadable files.

"In 2015, Attorney General Harris announced the launch of a new initiative called OpenJustice, a first-of-its-kind open data Web portal designed to make previously obscured information available to the public through an interactive, easy-to-use web interface. This tool consists of two components: a Dashboard that spotlights key criminal justice indicators with user-friendly visualization tools, and an Open Data Portal that publishes complete raw datasets.

"The core mission of OpenJustice was to increase public safety transparency by making information both available and digestible to the general public. The initial datasets released through OpenJustice included Law Enforcement Officers Killed or Assaulted in the Line of Duty; Deaths in Custody; and Arrests and Bookings. Earlier this year, OpenJustice 1.1 was launched to add more local context to this data, such as population and demographic information. The OpenJustice Data Act would revolutionize the public's access to information about the criminal justice system by reinventing the Attorney General's traditional printed reports as datasets within the OpenJustice Data portal. The bill will enable Californians to review the statistical information most important to them in context, using dynamic, interactive tools, rather than rely on preselected, prepackaged summaries. AB 2524 will truly democratize public safety data, significantly strengthening trust in law enforcement.

"AB 2524 will also modernize the way the state collects this information from locals. Despite the continuing development of digital technologies, as many as 60% of local agencies still report their criminal justice statistics to DOJ on paper; this bill will direct those agencies to submit electronically. By transitioning to an entirely digital reporting process, statewide data collection will be more efficient, accurate, and considerate of the environment."

4) **Argument in Opposition**: According to the *California State Sheriff's Association*, "While we appreciate your desire to increase efficiency and the use of technology, we are concerned that this bill represents a significant unfunded mandate on law enforcement agencies. It has been reported that at least 60% of agencies do no report electronically and enacting this bill will create massive cost pressures to acquire technology, secure storage space, and train staff on the new requirements imposed by this bill.

"Additionally, AB 2524 contemplates quarterly reporting where many statistics are currently reported annually. Not only will this increase workload, but it must be considered in the context of all of the reporting that is currently mandated, including new requirements on reporting of racial profiling and use of force data.

5) **Related Legislation**:

a) SB 1075 (Runner) would require DOJ's report to the Governor to include statistics on child molestation, as defined, in the same format and within the same tables that report on the number, rate per 100,000 population, and percentage change in other violent crimes, including rape. SB 1075 is pending in the Senate Committee on Public Safety.

b) SB 1031 (Hancock) would require the Board of State and Community Corrections, on or before July 1, 2019, to establish a Juvenile Justice Information System to develop and maintain statewide statistical information, as specified. SB 1031 would additionally, on January 1, 2020, remove the requirement that DOJ collect information regarding the juvenile justice system. SB 1031 is pending in the Senate Committee on Public Safety.

c) AB 1654 (Santiago) would require the State Auditor to include in this audit an evaluation of the institutions' compliance with state law governing crime reporting and the development and implementation of student safety policies and procedures, and require DOJ, commencing July 1, 2017, to provide guidance to and develop model protocols for California's public and private institutions of higher education and systemwide offices of public institutions of higher education regarding student safety state laws. AB 1654 is pending in the Assembly Committee on Appropriations.

6) **Prior Legislation**:

a) AB 953 (Weber), Chapter 466, Statutes of 2015, enacted the Racial and Identity Profiling Act of 2015, which revised the definition of racial profiling to instead refer to racial or identity profiling. Specified law enforcement agencies are required to report on all stops, as defined.

b) AB 71 (Rodriguez), Chapter 462, Statutes of 2015, requires each law enforcement agency to annually furnish to DOJ a report of specified incidents when a peace officer is involved in the use of force, as defined.

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General Kamala Harris

Opposition

California State Sheriffs' Association

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